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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

In re:

SK FOODS, L.P., a California limited
partnership,

Debtor.

BANK OF MONTREAL, as Administrative
Agent, successor by Assignment to
Debtors SK Foods, L.P. and RHM
Industrial Specialty Foods, Inc., a
California corporation, d/b/a Colusa
County Canning Co.,

Plaintiff

v.

CARY SCOTT COLLINS, an individual doing
business as Collins and Associates;
FREDERICK SCOTT SALYER, an individual;
SAS 1999 TRUST; CGS 1999 TRUST;
SAS 2007 TRUST; CGS 2007 TRUST;
STEFANIE A. SALYER, an individual;
CAROLINE G. SALYER, an individual; and
MONTEREY PENINSULA FARMING, LLC,

Defendants.

Case No. 09-29162

Chapter 11

Adversary Proceeding No.

ADVERSARY COMPLAINT FOR
AVOIDANCE AND RECOVERY OF
FRAUDULENT TRANSFERS, AND
FOR OTHER RELIEF

1 Bank of Montreal, as Administrative Agent ("*BMO*" or the "*Agent*") as successor by
2 assignment to Bradley D. Sharp, the duly appointed and acting Chapter 11 Trustee (collectively
3 the "*Trustee*" unless the context indicates otherwise) in the case of SK Foods, L.P. and RHM
4 Industrial Specialty Foods, Inc. d/b/a Colusa County Canning Co., hereby files this Adversary
5 Complaint, and in support thereof, avers as follows:

6
7 SUMMARY OF ALLEGATIONS

8 Without authorization from the Chapter 11 Trustee or the Court, Defendant Collins, a
9 convicted white collar criminal, apparently used "estimated" financial data to file unauthorized
10 tax returns, schedules and other documents on behalf of the Debtors. Additionally, earlier in the
11 same tax year, Collins and Salyer obtained \$3.2 million in apparently improper tax refunds from
12 the Internal Revenue Service and the California Franchise Tax Board. Collins then moved the
13 funds to his personal account, and sent the refunds to secret overseas bank accounts in
14 Liechtenstein and the West Indies. This Complaint seeks to recover these transfers, seeks relief
15 for Collins' violations of the automatic stay, as well as certain equitable relief. Defendant
16 Salyer, whose returns are at issue, is alleged to have employed Collins as his personal accountant
17 to prepare the returns, have ultimate control over the overseas bank accounts, have endorsed the
18 refund checks to Collins, and otherwise directed and controlled Collins' transfer of the funds
19 abroad in aid of his own attempt to flee prosecution on other crimes and otherwise conceal his
20 assets from his creditors. Additionally, in the course of its investigation for this Complaint, the
21 Agent discovered that Salyer and Collins purportedly transferred ownership of Cedenco Foods,
22 SK Foods' New Zealand operations (which was subject to a separate ownership claim by the
23 Agent) to a secret trust located in the Cook Islands, an offshore haven in the South Pacific for
24 persons fleeing creditor claims. The Complaint seeks to recover the value of these transfers
25 which were made for the benefit of Salyer and his daughters.
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THE PARTIES

1. BMO is the successor by assignment to Bradley D. Sharp, the duly appointed and acting Chapter 11 Trustee in the case of SK Foods, L.P., a California limited partnership ("*SK Foods*") and RHM Industrial Specialty Foods, Inc., a California corporation, d/b/a Colusa County Canning Co. ("*RHM*") (collectively, the "*Debtors*").

2. SK Foods is a California limited partnership with its principal office at 1175 19th Avenue, Lemoore, California. Its registered agent is Scott Salyer.

3. RHM Industrial Specialty Foods, Inc., a California corporation, d/b/a Colusa County Canning Co., is a California corporation with its principal office at 1175 19th Avenue, Lemoore, California ("*RHM*"). Its registered agent is Richard Washburn.

4. Cary Scott Collins is an individual residing in the State of California and doing business as Collins & Associates (collectively, "*Collins*").

5. Frederick Scott Salyer is an individual residing in the State of California.

6. The SAS 1999 Trust is a trust created under the laws of the State of California. On information and belief, Stefanie A. Salyer is the sole beneficiary of the SAS 1999 Trust. Robert Pruett ("*Pruett*") is the current trustee of the SAS 1999 Trust.

7. The CGS 1999 Trust is a trust created under the laws of the State of California. On information and belief, Caroline G. Salyer is the sole beneficiary of the CGS 1999 Trust. Pruett is the current trustee of the CGS 1999 Trust.

8. The SAS 2007 Trust is a trust created under the laws of the State of California. On information and belief, Stefanie A. Salyer is the sole beneficiary of the SAS 2007 Trust. Pruett is the current trustee of the SAS 2007 Trust.

9. The CGS 2007 Trust is a trust created under the laws of the State of California. On information and belief, Caroline G. Salyer is the sole beneficiary of the CGS 2007 Trust. Pruett is the current trustee of the CGS 2007 Trust.

1 10. Monterey Peninsula Farming LLC is a California Limited Liability Company.

2 11. The registered agent of Monterey Peninsula Farming LLC is Cary S. Collins.

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4 **JURISDICTION AND VENUE**

5 12. An involuntary petition was filed with respect to the Debtors on May 5, 2009. On
6 May 7, 2009, the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the
7 United States Code, 11 U.S.C. § 101, *et seq.* (the "*Bankruptcy Code*").

8 13. This Court found and ordered that the date of the petitions was May 5, 2009
9 ("*Petition Date*").

10 14. This Court has jurisdiction over this adversary proceeding under 28 U.S.C.
11 §§ 1334 and 157, and Rules 7001(7) and (9) of the Federal Rules of Bankruptcy Procedure. In
12 addition, several of the claims set forth herein arise out of the United States Bankruptcy Code.
13
14 11 U.S.C. §101, *et seq.*

15 15. This is a core proceeding under 28 U.S.C. §§ 1408 and 1409.

16 16. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

17
18 **FACTUAL ALLEGATIONS**

19 17. SK Foods is a California limited partnership.

20 18. SKPM Corporation ("*SKPM*") is a California corporation and is the general
21 partner of SK Foods, owning a 55% interest in SK Foods. Scott Salyer has been President of and
22 controlled SKPM at all relevant times.

23 19. The Scott Salyer Revocable Trust ("*SSR Trust*") is a California trust. Scott
24 Salyer is both the trustee and sole beneficiary of the SSR Trust. The SSR Trust is the only
25 limited partner of SK Foods, owning 45% of SK Foods.

26 20. The SSR Trust also owns 100% of SKPM.

1 21. SK Foods was formed on or about December 29, 1992 by SKPM (under a former
2 name) as general partner and Salyer American, a California corporation, as limited partner.

3 22. On or about December 29, 1995, Salyer American assigned its limited partnership
4 interest in SK Foods to Salyer individually. Salyer thereafter transferred his limited partnership
5 interest to the SSR Trust.
6

7 23. At all relevant periods Salyer controlled, operated and managed SK Foods and
8 RHM.

9 24. Sixty percent of RHM is owned by SKF Canning, LLC, a Nevada limited liability
10 company ("*SKF Canning*"), which in turn is owned 100% by the SSR Trust.

11 25. Subsequent to the Petition Date, Bradley D. Sharp became the duly appointed
12 Chapter 11 Trustee ("*Sharp*") for SK Foods and RHM.

13 26. In April of 2011, this Court entered that certain Assignment of Claims and
14 Pending Litigation which assigned all right, title and interest and all litigation relating to this
15 matter to BMO.
16

17 **A. Factual Background**

18 27. In 2001, Defendant Collins pled guilty in the United States District Court for the
19 Northern District of California to the crime of making false statements on a loan application.

20 28. Collins was sentenced to prison for one day, followed by a three year period of
21 supervised release, and was ordered to pay a fine of \$10,000.

22 29. Collins met Salyer in April of 2009.

23 30. Collins and Salyer were introduced by Magdalena Del Valle, a vice-president at
24 Mechanics Bank.

25 31. Collins purported to act as Salyer's personal accountant and also provided certain
26 "estate planning" and various other financial services to Salyer.
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1 32. Defendant Scott Salyer was arrested at John F. Kennedy Airport on February 4,
2 2010 pursuant to a twenty-count Criminal Complaint asserting violations of the RICO Act,
3 obstruction of justice, commercial bribery, and other crimes.

4 33. The criminal complaint against Salyer relates to his alleged personal orchestration
5 of a wide ranging scheme whereby SK Foods bribed purchasing managers to purchase its
6 product at inflated prices, much of which was adulterated because it contained mold count levels
7 that significantly exceeded thresholds established by the FDA.

8 34. Salyer's arrest ended a six month odyssey in which he attempted to gain residency
9 in countries with no extradition treaty with the United States, and moved millions of dollars to
10 offshore accounts in Liechtenstein, Switzerland and the West Indies.

11 35. In the summer of 2009, Collins facilitated Salyer's relationship with certain
12 bankers in Switzerland.

13 36. In email correspondence between a banker in Zurich and Collins, the two discuss
14 setting up certain "business relationships" for Collins and Salyer.

15 37. In subsequent email communications between Salyer and Collins, dated July 11,
16 2009, the two discuss meeting with a banker at Valartis Bank in Zurich on Thursday, July 17,
17 2009.

18 38. Notably, Collins mentions to Salyer that he had not "disclosed to Valartis any of
19 the US legal activities" and that "face time with Swiss bankers settles their nerves."

20 39. This Complaint seeks to recover any refunds which Collins and/or Salyer received
21 on account of the unauthorized tax returns filed by Collins on behalf of the Debtors with the
22 Internal Revenue Service and the California Franchise Tax Board.

23 40. The refunds were obtained as part of a scheme carried out by Defendant Collins,
24 in which he filed tax returns and other documents on behalf of the Debtors using fabricated
25 financial figures or estimates to obtain improper refunds from the Internal Revenue Service.
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1 41. These funds were subsequently transferred overseas and placed beyond the
2 jurisdiction of the U.S. Courts.

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4 **B. Collins Files Unauthorized Tax Returns in Violation of the Automatic Stay**

5 42. At all relevant times, Sharp controlled all accounting records for SK Foods and
6 RHM.

7 43. Sharp retained the accounting firm of Eichstaedt & Deveraux LLP to prepare the
8 federal and state tax returns for SK Foods and RHM for the year ending in 2008.

9 44. Sharp never retained Collins.

10 45. The tax returns were on a 6-month extension and thus the partnership tax return
11 for SK Foods and the corporate tax return for RHM were not due until September 15, 2009.

12 46. Collins was aware that the tax returns for SK Foods and RHM were due on
13 September 15, 2009.

14 47. On September 15, 2009 Collins filed a 2008 Federal 1065 U. S. Partnership Tax
15 Return for SK Foods LP and a 2008 120-S. U. S. Income Tax Return for an S-Corporation for
16 RHM.

17 48. Collins also filed tax returns with the California Franchise Tax Board on behalf of
18 SK Foods and/or RHM.

19 49. These returns purported to supersede the legitimate tax returns for both companies
20 that were filed by the bankruptcy trustee, Sharp.

21 50. Collins did not have access to the accounting records of SK Foods or RHM.

22 51. Each line item on the tax returns prepared by Collins contained rounded numbers.

23 52. The returns submitted by Collins were based on estimates.

24 53. The returns submitted by Collins were and are incorrect.

1 54. Collins had no authority from the Court or under the Bankruptcy Code to file any
2 of these returns.

3 55. Collins filed the returns after the commencement of the bankruptcy cases.

4 56. Collins knew that SK Foods and RHM had filed for bankruptcy.

5 57. Collins never received authorization from Sharp to file any tax returns.

6 58. Collins never received authorization from the Court to file any tax returns.

7 59. Collins prepared Salyer's personal state and federal tax returns for 2008.

8 60. Collins prepared Salyer's personal state and federal tax returns for 2009.

9 61. Collins filed the returns at Salyer's direction.

10 62. The superseding tax returns for both SK Foods and RHM filed by Collins showed
11 a significant loss that passed through to Salyer.

12 63. Through the subsequent filing of his own personal return, Salyer attributed the
13 loss from SK Foods and RHM unto himself.

14 **C. Collins Deposits Salyer's Tax Refunds in his Personal Account and Transfers**
15 **the Proceeds Overseas**

16 64. During August of 2009, two government refund checks in the name of Frederick
17 Scott Salyer, totaling approximately \$3,199,374.

18 65. Additionally, upon information and belief, by virtue of their indirect ownership of
19 RHM, Stefanie A. Salyer and Caroline G. Salyer and/or their respective trusts attributed the loss
20 from RHM unto themselves.

21 66. The refund checks were endorsed by Salyer to Collins and Associates.

22 67. The tax returns filed by Collins led the IRS to issue a tax refund check of
23 \$2,243,684 and the California Franchise Tax Board (the "FTB") to issue a tax refund check of
24 \$955,690 in August of 2009 (the "*Tax Refunds*" and the subsequent transfers thereof,
25 the "*Unauthorized Tax Refund Transfers*").
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1 68. Upon information and belief, all or a substantial portion of the Tax Refunds are
2 attributed to the Debtors.

3 69. Collins deposited the IRS portion of the Tax Refunds into a Collins and
4 Associates account at Mechanics Bank on or about August 17, 2009.

5 70. Collins deposited the FTB portion of the Tax Refunds into a Collins and
6 Associates account at Mechanics Bank on or about August 31, 2009.

7 71. Collins then proceeded to open a new account in his own name on September 9,
8 2009 at Mechanics Bank titled "Cary S. Collins d/b/a Collins and Associates."

9 72. This account was opened with a wire transfer of the approximately \$3.2 million
10 proceeds of the Tax Refunds.

11 73. In an email dated on or about September 14, 2009, an associate of Collins
12 contacted an individual at a Zurich wealth management company to let them know that
13 "additional funds [would be] arriving that day."

14 74. However, all did not go smoothly with Collins' attempts to transfer the Tax
15 Refunds overseas.

16 75. Collins' actions triggered a "suspicious activities" alert at Mechanics Bank on
17 August 17 and August 31, 2009 due to the size of the Tax Refunds (\$2,243,684 and \$955,690),
18 and because they were government refund checks made payable to Salyer.

19 76. The suspicious activities alert was triggered because both of the deposits were
20 government refund checks made payable to "Frederick S. Salyer" and it was not normal for
21 someone to deposit such a large third party check into an account.

22 77. This was particularly true because Salyer had his own accounts at Mechanics
23 Bank.

24 78. According to a report prepared by the FBI, Collins' account indicated additional
25 suspicious activity.

1 79. For example, there were incoming wires from other Collins' accounts, including
2 one he held at another bank.

3 80. Additionally, there were outgoing wires from Collins' account to a bank account
4 named Fast Falcon LLC, which was located in Nevis, West Indies with an account in
5 Liechtenstein.

6 81. In a later email in the chain disclosed in Salyer's criminal case dated
7 September 12, 2009, Salyer expresses to Collins his displeasure with Mechanics Bank based on
8 the fact that money had not yet been sent overseas and said "Keep trying or we move to another
9 Bank that knows how to send wires."

10 82. However, Collins eventually succeeded in getting Mechanics Bank to process the
11 wires, and wired the proceeds of the Tax Refunds overseas to an account called "Fast Falcon
12 LLC" in Nevis, West Indies, as well as an account in Liechtenstein.

13 83. In addition to the West Indies and Liechtenstein wires, there were other outgoing
14 wires to accounts in Australia, New Zealand and the United Kingdom.

15 84. The FBI subsequently interviewed bank personnel who interacted with Collins
16 regarding the Unauthorized Tax Refund Transfers in the course of its investigation of Salyer.

17 85. Collins told the account manager at Mechanics Bank that Salyer was attempting
18 to purchase the Cedenco business, which was a family of companies affiliated with SK Foods
19 that was subject to receivership proceeding in Australia and New Zealand.

20 86. When the account manager questioned Collins as to why he was depositing
21 Salyer's checks into his account, Collins told her that he "wanted to do it this way."

22 87. Collins served as a director or officer of Cedenco.

23 88. Collins told the Mechanics Bank officer that he and Salyer had created the
24 offshore entity Fast Falcon LLC so that they could purchase the Cedenco businesses without
25 revealing their identity.
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1 89. Collins did this because no person or entity affiliated with Salyer was permitted to
2 acquire that business.

3 90. Collins had an ownership interest in Fast Falcon LLC.

4 91. Collins had control of assets of Fast Falcon LLC.

5 92. Collins has the power to transfer money from the accounts of Fast Falcon LLC to
6 accounts both in the United States and abroad.

7 93. A subsequent investigation by Mechanics Bank concluded that Collins and Salyer
8 were using the Mechanics Bank accounts to make transfers to Fast Falcon LLC in an attempt to
9 disguise the true ownership and origin of the funds.

10 94. Mechanics Bank also concluded that Collins and Salyer had committed fraud in
11 conjunction with the Australian-based Cedenco.

12 95. Upon information and belief, the FTB and the IRS also issued other refunds that
13 were improperly obtained by Collins and transferred abroad in a similar fashion.

14 96. The Tax Refunds were property of the estate.

15 97. Salyer was not indebted to Collins for an amount equal to or greater than the
16 amount of the Tax Refunds.

17 98. The Unauthorized Tax Refund Transfers were subsequently transferred to
18 another bank account that Salyer controlled in Andorra.

19 99. The funds subsequently transferred to Andorra originating from the above
20 described transfers.

21 100. Andorra is a small country in Europe that has no extradition treaty with the United
22 States.

23 101. Collins also has the power to transfer funds to and for the Andorra account.

24 102. Collins has failed and refused to turn over the Tax Refunds to the estate.

COUNT I: AVOIDANCE OF POST-PETITION TRANSFERS PURSUANT TO 11 U.S.C. § 549 AND CALIFORNIA CIVIL CODE §§ 3439.08, 3439.07 AND 3439.05 AGAINST COLLINS

103. The Trustee incorporates by reference the preceding paragraphs of this Complaint as though set forth fully herein.

104. The Unauthorized Tax Refund Transfers occurred after the Petition Date.

105. The Unauthorized Tax Refund Transfers were transfers of the Debtors' property.

106. Collins did not obtain authorization from the Court or Sharp to file any tax returns.

107. Collins and Associates did not obtain authorization from the Court or Sharp to file any tax returns.

108. Salyer did not obtain authorization from the Court or Sharp to file any tax returns on behalf of the Debtors.

109. Neither Collins nor Salyer had authorization to obtain any of the Tax Refunds.

110. The Unauthorized Tax Refund Transfers were made within four years of the filing of this Complaint.

111. The Unauthorized Tax Refund Transfers were made without the Debtors receiving a reasonably equivalent value from Collins or Salyer in exchange for the Unauthorized Tax Refund Transfers because the filing of the returns was not authorized and the Debtors received nothing of value from Collins or Salyer.

112. Further, the Debtors received less than a reasonably equivalent value because, *inter alia*, the beneficiaries of the Unauthorized Tax Refund Transfers gave nothing in exchange for the refunds.

113. The Unauthorized Tax Refund Transfers to the benefit of Scott Salyer cannot be justified as a distribution of profits or equity on account of his ownership interests due to the fact

1 that the Debtors were in bankruptcy and insolvent on the date of each of the Unauthorized Tax
2 Refund Transfers and Scott Salyer did not directly own the Debtors.

3 114. The Unauthorized Tax Refund Transfers to the benefit of Collins cannot be
4 justified as a distribution of profits or equity because he does not have any ownership interests in
5 the Debtors.

6 115. The Debtors were insolvent on the date of each of the Unauthorized Tax Refund
7 Transfers or became insolvent as a result of each of the Unauthorized Tax Refund Transfers.

8 116. The Debtors were insolvent at all relevant times due to, *inter alia*, a scheme to
9 defraud allegedly carried out by former members of the Debtors' senior management which
10 began in or about January 1998 and continued through shortly before the Petition Date. This
11 alleged scheme caused the loss of customers arising from the criminal indictment of members of
12 the Debtors' management associated with the scheme. In addition to the scheme, there were
13 significant operational losses associated with the failure of the Debtors' chili businesses in the
14 2006-2007 timeframe and other operational problems.

15 117. This alleged scheme involved the bribing of purchasing managers at the Debtors'
16 customers by members of the Debtors' management to purchase the Debtors' products at inflated
17 prices. Often, the product which was sold as a result of the bribes was so full of mold that it was
18 unsalable in the United States because it did not meet FDA guidelines; however, the Debtors'
19 senior management, including defendant Scott Salyer, allegedly caused the moldy product to be
20 misbranded by falsifying reports to show a lower mold content. A joint investigation into these
21 activities by the FBI, IRS, FDA, and other agencies began in 2005, which led to a raid of the
22 Debtors' businesses in April of 2008. Once the investigation was made public, many of the
23 Debtors' customers refused to deal with them due in part to the mold issue, which led the
24 Debtors to file for bankruptcy protection. Also, upon information and belief, absent the alleged
25 fraudulent conduct, the Debtors would have been insolvent at an earlier date.

1 118. At all relevant times, the sum of the Debtors' actual liabilities were greater than
2 their assets, due to, *inter alia*, the ongoing fraud and criminal activity which was concealed from
3 the Debtors' creditors, inventory and other losses associated with the failure of the Debtors' child
4 businesses in the 2006-2007 timeframe, and losses associated with poor internal controls.

5 119. Specifically, the Debtors were in default under loan obligations to their lenders
6 since at least April of 2008, and were able to operate only through default waivers and periods of
7 forbearance from that time through the Petition Date.

8 120. The Unauthorized Tax Refund Transfers could be avoided under the California
9 Uniform Fraudulent Transfer Act by a creditor, such as BMO, holding an unsecured claim
10 which has been allowed under Section 502 of the Bankruptcy Code.

11 121. The Trustee is entitled to recover the Unauthorized Tax Refund Transfers or the
12 value of the Tax Refunds from Collins for the benefit of the estate pursuant to 11 U.S.C. §§ 549
13 and 550(a) and California Civil Code §§ 3439.08, 3439.07 and 3439.05.

14 WHEREFORE, the Trustee prays for a judgment against Collins avoiding and preserving
15 for the benefit of the estate the Unauthorized Tax Refund Transfers and entering judgment in an
16 amount not less than \$3,199,374 together with the amount of any additional transfer of refunds
17 received from the FTB or the IRS, plus interest, attorneys' fees and costs, including, without
18 limitation, pre-judgment and post-judgment interest, the exact amount to be proven and
19 determined at trial, and such other and further relief as this Court deems just and equitable.

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21
22 **COUNT II: RECOVERY OF FRAUDULENT TRANSFERS**
23 **PURSUANT TO 11 U.S.C. § 550(A) AGAINST COLLINS**

24 122. The Trustee incorporates by reference the preceding paragraphs of this Complaint
25 as though set forth fully herein.

26 123. The Tax Refunds received by Collins are avoidable as set forth in Count I above.
27
28

124. Pursuant to 11 U.S.C. § 550(a), the Trustee may recover from Collins the Tax Refunds and the value of the Unauthorized Tax Refund Transfers, as the entity for whose benefit such transfers were made or as an immediate or mediate transferee of the Tax Refunds.

125. In the alternative, the Tax Refunds were property of the estate pursuant to 11 U.S.C. §541 and Collins may be ordered to turn over any Tax Refunds in his possession pursuant to 11 U.S.C. §542.

WHEREFORE, the Trustee prays for a judgment against Collins avoiding and preserving for the benefit of the estate the Unauthorized Tax Refund Transfers and entering judgment in an amount not less than \$3,199,374 together with the amount of any additional transfer of refunds received from the FTB or the IRS, plus interest, attorneys' fees and costs, including, without limitation, pre-judgment and post-judgment interest, the exact amount to be proven and determined at trial, and such other and further relief as this Court deems just and equitable.

**COUNT III: VIOLATION OF THE AUTOMATIC STAY AGAINST COLLINS
REGARDING THE FILING OF THE UNAUTHORIZED TAX RETURNS**

126. The Trustee incorporates by reference the preceding paragraphs of this Complaint as though set forth fully herein.

127. Collins filed tax returns for SK Foods and/or RHM.

128. Collins knew that SK Foods and RHM had filed for bankruptcy.

129. Collins filed the tax returns with the intent to obtain control over the Tax Refunds.

130. Collins filed the tax returns in bad faith so that property of the estate could be transferred outside of the United States.

WHEREFORE, the Trustee prays for a judgment against Collins in an amount not less than \$3,199,374 together with the amount of any additional transfer of refunds received from the FTB or the IRS, plus interest, attorneys' fees and costs, including, without limitation, pre-judgment

1 and post-judgment interest, the exact amount to be proven and determined at trial, punitive
 2 damages, and such other and further relief as this Court deems just and equitable.

3
 4 **COUNT IV: UNJUST ENRICHMENT AGAINST COLLINS FOR**
AMOUNTS RECEIVED FROM THE FILING OF THE UNAUTHORIZED TAX RETURNS

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 6 131. The Trustee incorporates by reference the preceding paragraphs of this Complaint
 7 as though set forth fully herein, and makes the following allegations in this Count IV in the
 8 alternative to the counts set forth above.

9 132. In light of the wrongful scheme identified above, Collins improperly received
 10 Tax Refunds that should have otherwise been retained and used by the estate to repay the
 11 creditors of SK Foods and RHM.

12 133. Collins transferred the Tax Refunds identified above to various bank accounts
 13 located outside of the United States.

14 134. Upon information and belief, Collins retains control and/or possession of a
 15 portion of the Tax Refunds identified above.

16 135. The Trustee was entitled to the benefit, use, and value of the Tax Refunds for the
 17 benefit of creditors.

18 136. It would be inequitable to permit Collins to retain such Tax Refunds.

19 137. There is no written contract between Collins and the estate that provides the estate
 20 with a claim for breach of the same against Collins.

21 138. The estate has an inadequate remedy at law and is entitled to a judgment against
 22 Collins for unjust enrichment.

23 139. As a result, principles of equity dictate that Collins be held liable for all damages
 24 suffered by the Trustee as a result of Collins' misconduct.
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1 140. The Trustee requests, *inter alia*, that the Court impose a constructive trust in favor
2 of the Trustee as to the Tax Refunds identified above, the exact amount to which the Trustee is
3 entitled to be proven and determined at trial.

4 WHEREFORE, the Trustee prays for a judgment against Collins in an amount not less than
5 \$3,199,374 together with the amount of any additional transfer of refunds received from the FTB
6 or the IRS, plus interest, attorneys' fees and costs, including, without limitation, pre-judgment
7 and post-judgment interest, the exact amount to be proven and determined at trial, the imposition
8 of a constructive trust on the assets of Collins, and such other and further relief as this Court
9 deems just and equitable.
10

11 **COUNT V: AVOIDANCE OF TRANSFERS PURSUANT TO 11 U.S.C. §§ 548, 549 AND**
12 **CALIFORNIA CIVIL CODE §§ 3439.08, 3439.07 AND 3439.05 AGAINST SALYER, SAS 1999**
13 **TRUST, CGS 1999 TRUST, SAS 2007 TRUST, CGS 2007 TRUST, STEFANIE A. SALYER, AND**
14 **CAROLINE G. SALYER**

15 141. The Trustee incorporates by reference the preceding paragraphs of this Complaint
16 as though set forth fully herein.

17 142. Salyer directed Collins in filing for the Tax Refunds and making the Unauthorized
18 Tax Refund Transfers.

19 143. Salyer obtained dominion and control over the Unauthorized Tax Refund
20 Transfers.

21 144. The Unauthorized Tax Refund Transfers were made in part for Salyer's benefit.

22 145. The Unauthorized Tax Refund Transfers occurred after the Petition Date.

23 146. The Unauthorized Tax Refund Transfers were transfers of Debtor's property.

24 147. Collins did not obtain authorization from the Court or Sharp to file any tax
25 returns.

26 148. Collins and Associates did not obtain authorization from the Court or Sharp to file
27 any tax returns.
28

1 149. Salyer did not obtain authorization from the Court or Sharp to file any tax returns.

2 150. Neither Collins nor Salyer had authorization to obtain any Tax Refunds.

3 151. The Unauthorized Tax Refund Transfers were made within four years of the filing
4 of this Complaint.

5 152. The Unauthorized Tax Refund Transfers were made without the Debtors
6 receiving a reasonably equivalent value from Collins or Salyer in exchange for the Unauthorized
7 Tax Refund Transfers because the filing of the returns was not authorized and the Debtors
8 received nothing of value from Collins or Salyer.

9 153. Further, the Debtors received less than a reasonably equivalent value because,
10 *inter alia*, the beneficiaries of the Unauthorized Tax Refund Transfers gave nothing in exchange
11 for the refunds.

12 154. The Unauthorized Tax Refund Transfers to the benefit of Scott Salyer cannot be
13 justified as a distribution of profits or equity on account of his ownership interests due to the fact
14 that the Debtors was insolvent on the date of each of the Unauthorized Tax Refund Transfers and
15 Scott Salyer did not directly own the Debtors.

16 155. The Unauthorized Tax Refund Transfers to the benefit of Collins cannot be
17 justified as a distribution of profits or equity because they do not have any ownership interests in
18 the Debtors.

19 156. The Debtors were insolvent on the date of each of the Unauthorized Tax Refund
20 Transfers or became insolvent as a result of each of the Unauthorized Tax Refund Transfers.

21 157. The Worker, Homeownership, and Business Assistance Act of 2009, Pub.L. No.
22 111-92, enacted on November 6, 2009, provided, among other things, that a taxpayer with net
23 operating losses ("NOLs") for 2008 or 2009 may elect to carry the NOL from one of those
24 years back to the third, fourth, or fifth preceding taxable year instead of the second taxable year.
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1 158. Salyer, and upon information and belief, the SAS 1999 Trust, CGS 1999 Trust,
2 SAS 2007 Trust and CGS 2007 Trust received tax refunds on account of NOLs carried back to
3 prior tax years.

4 159. Since January 1, 2007, the Debtors made payments in excess of \$1 million to
5 satisfy the personal tax liabilities of Salyer and his daughters.

6 160. The refunds received on account of the NOLs, including but not limited to the
7 portion attributable to the Debtors' losses, were obtained by the Defendants without giving
8 reasonably equivalent value because the Debtors paid the original taxes to which the refunds
9 relate.

10 161. The Debtors were insolvent or became insolvent as a result of the losses to which
11 the NOLs relate, and may be recovered as fraudulent transfers.

12 162. The Trustee is entitled to recover the Unauthorized Tax Refund Transfers or the
13 value of the Tax Refunds from Salyer for the benefit of the estate pursuant to 11 U.S.C. §§ 548,
14 549 and 550(a) and California Civil Code §§ 3439.08, 3439.07 and 3439.05.

15 WHEREFORE, the Trustee prays for a judgment against the defendants identified in this
16 count avoiding and preserving for the benefit of the estate the Unauthorized Tax Refund
17 Transfers and entering judgment in an amount not less than \$3,199,374 together with the amount
18 of any additional transfer of refunds received from the FTB or the IRS and any NOLs improperly
19 obtained, plus interest, attorneys' fees and costs, including, without limitation, pre-judgment and
20 post-judgment interest, the exact amount to be proven and determined at trial, and such other and
21 further relief as this Court deems just and equitable.

COUNT VI: RECOVERY OF FRAUDULENT TRANSFERS PURSUANT TO
 11 U.S.C. § 550(A) AGAINST SALYER, SAS 1999 TRUST, CGS 1999 TRUST,
 SAS 2007 TRUST, CGS 2007 TRUST, STEFANIE A. SALYER AND CAROLINE G. SALYER

163. The Trustee incorporates by reference the preceding paragraphs of this Complaint as though set forth fully herein.

164. The Tax Refunds received by Salyer, SAS 1999 Trust, CGS 1999 Trust, SAS 2007 Trust, CGS 2007 Trust, Stefanie A. Salyer and Caroline G. Salyer are avoidable as set forth in Count V above.

165. Pursuant to 11 U.S.C. § 550(a), the Trustee may recover from Salyer, SAS 1999 Trust, CGS 1999 Trust, SAS 2007 Trust, CGS 2007 Trust, Stefanie A. Salyer and Caroline G. Salyer the Tax Refunds and the value of the Unauthorized Tax Refund Transfers, as the entity for whose benefit such transfers were made or as an immediate or mediate transferee of the Tax Refunds.

166. In the alternative, the Tax Refunds were property of the estate pursuant to 11 U.S.C. §541 and Salyer, SAS 1999 Trust, CGS 1999 Trust, SAS 2007 Trust, CGS 2007 Trust, Stefanie A. Salyer and Caroline G. Salyer may be ordered to turn over any Tax Refunds in their possession pursuant to 11 U.S.C. §542.

WHEREFORE, the Trustee prays for a judgment against the defendants identified in this count avoiding and preserving for the benefit of the estate the Unauthorized Tax Refund Transfers and entering judgment in an amount not less than \$3,199,374 together with the amount of any additional transfer of refunds received from the FTB or the IRS and any NOLs improperly obtained, plus interest, attorneys' fees and costs, including, without limitation, pre-judgment and post-judgment interest, the exact amount to be proven and determined at trial, and such other and further relief as this Court deems just and equitable.

**COUNT VII: VIOLATION OF THE AUTOMATIC STAY AGAINST SALYER REGARDING
THE FILING OF THE UNAUTHORIZED FEDERAL AND STATE TAX RETURNS**

167. The Trustee incorporates by reference the preceding paragraphs of this Complaint as though set forth fully herein.

168. At Salyer's direction, Collins filed tax returns for SK Foods and/or RHM.

169. Salyer knew that SK Foods and RHM had filed for bankruptcy.

170. Collins filed the tax returns with the intent to obtain control over the Tax Refunds, *inter alia*, for Salyer's benefit.

171. At Salyer's direction, Collins filed the tax returns in bad faith so that property of the estate could be transferred outside of the United States.

WHEREFORE, the Trustee prays for a judgment against Salyer in an amount not less than \$3,199,374 together with the amount of any additional transfer of refunds received from the FTB or the IRS, plus interest, attorneys' fees and costs, including, without limitation, pre-judgment and post-judgment interest, the exact amount to be proven and determined at trial, and such other and further relief as this Court deems just and equitable.

COUNT VIII: UNJUST ENRICHMENT AGAINST SALYER, SAS 1999 TRUST, CGS 1999 TRUST, SAS 2007 TRUST, CGS 2007 TRUST, STEFANIE A. SALYER AND CAROLINE G. SALYER AMOUNTS RECEIVED FROM THE FILING OF THE UNAUTHORIZED TAX RETURNS, AND TAX REFUNDS FROM NOL "CARRYBACKS"

172. The Trustee incorporates by reference the preceding paragraphs of this Complaint as though set forth fully herein, and makes the following allegations in this Count VIII in the alternative to the counts set forth above.

173. In light of the wrongful scheme identified above, Salyer improperly received Tax Refunds that should have otherwise been retained and used by the estate to repay the creditors of SK Foods and RHM.

1 174. Collins transferred the Tax Refunds identified above to various bank accounts
2 located outside of the United States with Salyer's direction and consent.

3 175. Upon information and belief, Salyer retains control and/or possession of a portion
4 of the Tax Refunds identified above.

5 176. The Trustee was entitled to the benefit, use, and value of the Tax Refunds for the
6 benefit of creditors.

7 177. It would be inequitable to permit Salyer to retain such Tax Refunds.

8 178. There is no written contract between Salyer and the estate that provides the estate
9 with a claim for breach of the same against Salyer.

10 179. The estate has an inadequate remedy at law and is entitled to a judgment against
11 Salyer for unjust enrichment.

12 180. As a result, principles of equity dictate that Salyer be held liable for all damages
13 suffered by the Trustee as a result of Collins' misconduct.

14 181. The Trustee requests, *inter alia*, that the Court impose a constructive trust in favor
15 of the Trustee as to the Tax Refunds identified above, the exact amount to which the Trustee is
16 entitled to be proven and determined at trial.

17 182. Additionally, *inter alia*, for taxable years 2006-2008, the Debtors made payments
18 on behalf of Salyer, SAS 1999 Trust, CGS 1999 Trust, SAS 2007 Trust, CGS 2007 Trust,
19 Stefanie A. Salyer and Caroline G. Salyer (collectively, the "*Salyer Defendants*") in order to
20 pay their federal and state income taxes owed upon income generated by the Debtors and other
21 tax obligations.

22 183. The estimated tax payments made by the Debtors exceeded the Salyer
23 Defendants' actual tax liability for each tax year as described above.

24 184. The Salyer Defendants did not return any of the estimated amounts that exceeded
25 their actual tax liability, but instead retained these sums for their use and benefit.

1 185. Also, among other reasons, the Debtors' bankruptcy as well as losses associated
2 with non-debtor entities for which the Debtors paid the Salyer Defendants' tax liabilities, has
3 triggered tax losses that the Salyer Defendants have carried back against taxes paid in prior tax
4 years using tax payments from the Debtors.

5 186. The result of the Salyer Defendants' actions in "carrying back" the tax losses has
6 resulted in the Salyer Defendants' obtaining tax refunds on taxes paid with funds advanced by
7 the Debtors.
8

9 187. The Salyer Defendants have no equitable right to retain the refunds generated
10 from tax payments made on their behalf by the Debtors, as it is money that would not have
11 otherwise been distributed to the Salyer Defendants and properly belongs to the Debtors'
12 bankruptcy estates.

13 188. The tax payments conferred a benefit on the Salyer Defendants who would
14 otherwise have been required to pay the taxes paid by Debtors with personal funds.

15 189. The Debtors were impoverished by the taxes paid on behalf of the Salyer
16 Defendants because these payments were made during a time when the Debtors were
17 experiencing financial difficulty.
18

19 190. The Debtors were impoverished by the taxes paid on behalf of the Salyer
20 Defendants because the Salyer Defendants have failed and refused to return the amounts
21 advanced on their behalf.

22 191. There is a direct relationship between the tax payments, retained refunds, and the
23 impoverishment of the Debtors and their asset depletion.

24 192. The Salyer Defendants appreciated and had knowledge of the benefit that the
25 Debtors were conferring on them when paying their tax obligations because they were relieved
26 of personal obligations to pay their corresponding tax obligations.
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193. There is no valid reason why the Salyer Defendants are entitled to retain the excess tax advance amounts or any consequent tax refunds as they had adequate resources and an obligation to pay their own tax obligations and have no equitable right to retain these payments.

194. Upon information and belief, the Salyer Defendants retain control and/or possession of a portion of the funds identified above.

195. The Trustee is entitled to the benefit, use, and value of those funds for the benefit of creditors.

196. It would be inequitable to permit the Salyer Defendants to retain such payments and/or distributions. Unless corrected by the Court, the tax refunds and the benefits thereof would inure exclusively to the Salyer Defendants benefit to the detriment of the Debtors.

WHEREFORE, the Trustee prays for a judgment against the defendants identified in this count in an amount not less than \$3,199,374 together with the amount of any additional transfer of refunds received from the FTB or the IRS and/or the value of any NOLs improperly obtained, plus interest, attorneys' fees and costs, including, without limitation, pre-judgment and post-judgment interest, the exact amount to be proven and determined at trial, the imposition of a constructive trust on the assets of Salyer, and such other and further relief as this Court deems just and equitable.

COUNT IX: AVOIDANCE OF FRAUDULENT TRANSFERS OF LOAN COLLATERAL AGAINST COLLINS, SALYER, SAS 1999 TRUST, CGS 1999 TRUST, SAS 2007 TRUST AND CGS 2007 TRUST, STEFANIE A. SALYER, CAROLINE G. SALYER AND MONTEREY PENINSULA FARMING, LLC ON BEHALF OF THE AGENT

197. This count is brought on behalf of the Agent, and the Agent incorporates by reference the preceding paragraphs of this Complaint as though set forth fully herein.

198. On September 28, 2007, the Debtors entered into a Credit Agreement with the Agent whereby certain Lenders agreed to provide up to \$200 million in financing to the Debtors.

1 199. Additionally, a non-debtor entity affiliated with the Debtors and controlled by
2 Salyer, SK Foods, LLC, guaranteed the Debtors obligations under this facility.

3 200. This entity held 100% of the shares of SK Foods International, a New Zealand
4 Corporation, which in turn directly or indirectly held all of the shares of SK Foods' New Zealand
5 operations, which was called Cedenco Foods ("Cedenco").
6

7 201. To collateralize the Agent's loan, Salyer caused both the Debtors and SK Foods
8 LLC to execute a Security Agreement dated as of September 28, 2007 in favor of the Agent
9 wherein they pledged substantially all of their assets to the Agent.

10 202. The Agent duly filed a UCC Financing Statement covering all right, title and
11 interest in and to all of the personal property and fixtures of SK Foods LLC, whether now owned
12 or existing or hereafter created, acquired or arising, which was perfected on or before
13 September 28, 2007 and remains in force.

14 203. In an April 3, 2009 Forbearance Agreement, SK Foods LLC and the Debtors
15 admitted that the Debtors were indebted to the Agent in the amount of \$192,781,886, together
16 with fees and interest, plus other amounts justly and truly owing, as of March 31, 2009 without
17 defense, offset or counterclaim.
18

19 204. The Agent subsequently demanded payment from SK Foods LLC for its
20 obligations under the Guaranty, but it failed and refused to meet these obligations or to surrender
21 possession of the Collateral, including the shares of Cedenco.

22 205. Subsequent to the Petition Date, the Agent commenced an action in the United
23 States District Court for the Northern District of Illinois on June 9, 2009 to obtain a judgment for
24 the breach of the Guaranty and to foreclose on its Collateral, which consisted primarily of the
25 shares of the New Zealand operations, including Cedenco.
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1 206. Despite numerous efforts to delay the case by SK Foods LLC (including affidavit
2 testimony by Collins attempting to delay judgment), the Agent ultimately obtained a judgment in
3 the fall of 2010 in excess of \$128 million.

4 207. The Agent has commenced supplementary proceedings against SK Foods LLC
5 and Collins, but to date it has received no meaningful response. SK Foods LLC has been held in
6 contempt of Court for not responding, and supplementary proceedings against Collins are
7 ongoing wherein he is contesting the personal jurisdiction of that Court and arguing that
8 proceedings against him should be brought in California. SK Foods LLC subsequently stopped
9 responding to Court inquiries, and its corporate charter has been revoked.¹

10 208. Shortly before this Complaint addressing the unauthorized Tax Returns was filed,
11 the Agent received from the Chapter 11 Trustee copies of a document production that Collins
12 and Associates produced to the Chapter 11 Trustee in another matter.

13 209. These documents revealed that in 2009, after the default on the obligations to the
14 Agent had occurred and while the bankruptcy was pending, Collins and Salyer purportedly
15 transferred ownership of the Cedenco businesses to a trust in the Cook Islands created by Salyer
16 for the benefit of his daughters (the "*Cook Islands Asset Transfers*").

17 210. As detailed below, recent revelations from affidavit testimony given by Collins
18 suggest that there was a mediate transferee of these assets, Monterey Peninsula Farming LLC,
19 which purportedly received the assets prior to their transfer to the Cook Islands.

20 211. The Cook Islands are in a remote part of the South Pacific Ocean, northeast of
21 New Zealand, between French Polynesia and American Samoa and are a haven for offshore asset
22 protection schemes.

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26 ¹ In bringing this Complaint against Collins in this Court, the Agent does not waive any of its rights with
27 respect to the proceedings currently pending in the United States District Court for the Northern District of
28 Illinois, or any claims regarding the New Zealand businesses.

1 212. On November 1, 2009, Collins received an inquiry from John Bowles, a senior
2 manager of Westpac Bank, inquiring about Salyer's legal problems in light of published media
3 reports and events that were occurring with the New Zealand operations.

4 213. Collins and Salyer were attempting to obtain funding from Westpac Bank to
5 facilitate their purchase of the Cedenco businesses in New Zealand and/or Australia.

6 214. On November 2, 2009, Collins responded via email. In this email, Collins tells
7 the bank officer that Cedenco is owned by an irrevocable trust created by Salyer in the Cook
8 Islands named "Hawker Sydley [sic] Trust."²

9 215. The confidentiality laws of the Cook Islands purport to prohibit the disclosure of
10 trust and banking relationships except with the consent of the customer, and purport to ensure
11 that no creditor or foreign government can gain access to bank or trust information.

12 216. As noted above, many of the Unauthorized Tax Refund Transfers went to a Nevis
13 LLC called "Fast Falcon." Collins and Salyer knew that asset protection trusts often use Nevis
14 LLC's in conjunction with offshore asset protection trusts like the Cook Islands trust at issue
15 here because it gives the creator of the trust direct control over the assets if the creator is listed as
16 the manager of the Nevis LLC.

17 217. Collins and Salyer believed that creating the Nevis LLC gave them added security
18 in that it keeps the assets one step removed from the trustee of the Cook Islands asset protection
19 trust.

20 218. Also, since the managers and members of a Nevis LLC are not public
21 information, the creator of the trust is able to assume control over the assets without disclosing
22 his control on any public records.

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27 ² It is notable that Salyer is a licensed jet pilot and that Hawker Siddeley and Falcon are two types of luxury
28 jet aircraft.

1 219. As alleged above, Collins told personnel at Mechanics Bank that the transfers to
2 the Nevis LLC were made to conceal Fast Falcon's affiliation with Collins and Salyer.

3 220. Salyer did in fact set up or cause to be set up a Cook Islands trust called "Hawker
4 Sydley [sic] Trust."

5 221. At various times, Collins has informed this Court that he provided "estate
6 planning" services to Salyer.

7 222. Collins assisted Salyer in setting up the "Hawker Sydley [sic] Trust."

8 223. Collins and Salyer, individually or with each other's assistance, caused ownership
9 of Cedenco to be transferred to the "Hawker Sydley [sic] Trust."

10 224. Collins was a director and/or officer of Cedenco.

11 225. Collins also stated in his email to Westpac Bank that the Debtors' bankruptcy was
12 precipitated by the Agent's refusal to extend further credit. Collins also claimed that a Cedenco
13 manager "misspoke" when he said that Cedenco was ultimately owned by Salyer's trust.
14

15 226. SK Foods LLC was ultimately owned by the Scott Salyer Revocable Trust.

16 227. The trustee of the Cook Islands trust was Asiaciti Trust Pacific Limited
17 ("Asiaciti"), and the beneficiaries were Mr. Salyer's children and grandchildren.
18

19 228. Asiaciti Trust is a trust company in Singapore with operations both in Nevis and
20 in the Cook Islands.

21 229. Shortly before Collins revealed the creation of the Cook Islands trust to the
22 Westpac banker, Gerard Rose, another attorney for Salyer and his affiliated companies, sent an
23 executed version of a document titled "Acceptance of Resignation and Appointment of
24 Successor Trustee and Resignation" for both the SAS 2007 Trust and the CGS 2007 Trust to a
25 paralegal at the Law Office of Gary Perry.

26 230. Additionally, shortly before Collins revealed the creation of the Cook Islands
27 trust to the Westpac banker, Gerard Rose, another attorney for Salyer and his affiliated
28

1 companies, sent an executed version of a document titled "Acceptance of Resignation and
2 Appointment of Successor Trustee and Resignation" for both the SAS 1999 Trust and the CGS
3 1999 Trust to a paralegal at the Law Office of Gary Perry.
4

5 231. In these documents, Rose, who was purportedly the "acting trustee" of the trusts,
6 resigns and Asiaciti is appointed in his place.

7 232. During the time period that Collins and Salyer transferred funds to the Nevis LLC
8 and abroad, Collins was acting as a director or officer of Cedenco as well as for SK Foods
9 International.

10 233. Collins and Salyer transferred Cedenco to a Cook Islands trust for the purpose of
11 hindering, delaying and defrauding the Agent.

12 234. Collins and Salyer knew that an action was pending in the United States District
13 Court for the Northern District of Illinois to foreclose on the shares of Cedenco's U.S. parent
14 company.

15 235. Collins and Salyer knew that a default had occurred with respect to the Debtors
16 and Guarantor's obligations to the Agent.

17 236. Collins and Salyer set up the Cook Islands trust sometime between the Petition
18 Date and November 2, 2009.

19 237. The Cook Islands Asset Transfers were made without giving reasonably
20 equivalent value in exchange for the Cook Islands Asset Transfers because neither SK Foods
21 International, SK Foods LLC, or any other party having an interest in Cedenco received anything
22 of value from Collins, Salyer, the SAS 1999 Trust, the SAS 2007 Trust, the CGS 1999 Trust, or
23 the CGS 2007 Trust.
24

25 238. The Cook Islands Asset Transfers to the benefit of Collins, Salyer, the SAS 1999
26 Trust, the SAS 2007 Trust, the CGS 1999 Trust, or the CGS 2007 Trust cannot be justified as a
27 distribution of profits or equity on account of any aspect of their ownership interest in various
28

1 Debtor-related entities due to the fact that the Debtors were in bankruptcy and insolvent on the
2 date of each of the Cook Islands Asset Transfers, the Guarantor was insolvent on the date of the
3 Cook Islands Asset Transfers, the Guarantor was subject to a pending foreclosure suit upon
4 substantially all of its assets on the date of the Cook Islands Asset Transfers, and Scott Salyer did
5 not directly own Cedenco.
6

7 239. Any Cook Islands Asset Transfers to the benefit of Collins cannot be justified as a
8 distribution of profits or equity because he did not have any ownership interests in Cedenco.

9 240. The Cook Islands Asset Transfers rendered SK Foods LLC and SK Foods
10 International insolvent.

11 241. SK Foods LLC was insolvent at all relevant times due to, *inter alia*, a scheme to
12 defraud allegedly carried out by former members of the Debtors' senior management which
13 began in or about January 1998 and continued through shortly before the Petition Date. This
14 alleged scheme caused the loss of customers arising from the criminal indictment of members of
15 management associated with the scheme. In addition to the scheme, there were significant
16 operational losses associated with the failure of the Debtors' chili businesses in the 2006-2007
17 timeframe and other operational problems.
18

19 242. This alleged scheme involved the bribing of purchasing managers at the Debtors'
20 customers by members of the Debtors' management to purchase the Debtors' products at inflated
21 prices. Often, the product which was sold as a result of the bribes was so full of mold that it was
22 unsalable in the United States because it did not meet FDA guidelines; however, the Debtors'
23 senior management, including defendant Scott Salyer, allegedly caused the moldy product to be
24 misbranded by falsifying reports to show a lower mold content. A joint investigation into these
25 activities by the FBI, IRS, FDA, and other agencies began in 2005, which led to a raid of the
26 Debtors' businesses in April of 2008. Once the investigation was made public, many of the
27 Debtors' customers refused to deal with them due in part to the mold issue, which led them to
28

1 file for bankruptcy protection and SK Foods LLC to default on its Guaranty. Also, upon
2 information and belief, absent the alleged fraudulent conduct, the Debtors and SK Foods LLC
3 would have been insolvent at an earlier date.

4
5 243. At all relevant times, the sum of the SK Foods LLC's actual liabilities were
6 greater than their assets, due to, *inter alia*, the Cook Islands Asset Transfers.

7 244. Specifically, the Debtors were in default under loan obligations to their lenders
8 since at least April of 2008, and were able to operate only through default waivers and periods of
9 forbearance from that time through the Petition Date. Also, SK Foods LLC failed and refused to
10 satisfy its obligations under its Guaranty.

11 245. On May 4, 2011, Collins proffered an affidavit in the United States District Court
12 for the Northern District of Illinois (Case No. 09-cv-3479), in which he testified that "[i]n about
13 January 2009, the stock of SK Foods, International, was transferred from SK Foods, LLC, to
14 Monterey Peninsula Farming, LLC." [Dkt. No 101-1, ¶2].

15 246. However, if Collins' testimony is true, the transfer to Monterey Peninsula
16 Farming, LLC ("*Monterey LLC*") was a fraudulent transfer.

17 247. SK Foods LLC had pledged substantially all of its assets to the Agent.

18 248. The Agent held a perfected security interest in the shares of SK Foods
19 International.
20

21 249. The purported transfer of SK Foods International to Monterey LLC was neither
22 disclosed to nor authorized by the Agent.

23 250. As of May 4, 2011, the records of the New Zealand Companies Office, which
24 maintains the records of corporate ownership on behalf of the government of New Zealand,
25 shows that SK Foods International is still 100% owned by SK Foods LLC.
26
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1 251. As of May 4, 2011, Collins is listed as the sole director of SK Food International
2 with the New Zealand Companies Office, yet he did not give notice of any change of the
3 company's ownership from SK Foods LLC to Monterey LLC.

4 252. Any transfer of SK Foods LLC to Monterey LLC was to an insider as Monterey
5 LLC was controlled by Salyer and Collins, and Monterey LLC did not give reasonably
6 equivalent value to SK Foods LLC.

7 253. Neither Monterey LLC nor the Salyer Defendants gave any consideration to SK
8 Foods LLC in exchange for the SK Foods International transfer.

9 254. Neither Monterey LLC nor the Salyer Defendants gave any consideration to the
10 Agent in exchange for the SK Foods International transfer.

11 255. The purported transfer of SK Foods International to Monterey LLC was made
12 with the actual intent to hinder, delay and defraud the Agent as part of the Salyer Defendants'
13 scheme to transfer ownership of the New Zealand operations to Salyer's daughters, and to place
14 assets outside the jurisdiction of U.S. courts by transferring them overseas to the Cook Islands
15 and elsewhere.

16 256. Upon information and belief, the transfer of SK Foods International to Monterey
17 LLC does not appear on SK Foods LLC's books and records.

18 257. The purported transfer of the shares of SK Foods International to Monterey LLC
19 caused SK Foods LLC to become insolvent, as the ownership SK Foods International constituted
20 substantially all of its assets.

21 258. As of the alleged January 2009 transfer, SK Foods LLC was insolvent for the
22 reasons set forth above.

23 259. As such, if the transfer to Monterey LLC occurred, Monterey LLC is liable as an
24 initial transferee, and the Salyer Defendants, including Stefanie A. Salyer and Caroline G.
25 Salyer, are liable as subsequent transferees, *inter alia*, as beneficiaries of the Cook Islands trust.

1 260. Upon information and belief, the Cook Islands Asset Transfers and/or the alleged
2 criminal acts described above caused Cedenco to be placed into receivership by lenders in New
3 Zealand, which caused the Agent's security interest to lose value.

4 261. The Cook Islands Asset Transfers could be avoided under the California Uniform
5 Fraudulent Transfer Act, the Illinois Uniform Fraudulent Transfer Act, and/or applicable
6 foreign law by a creditor, such as BMO, holding, inter alia, an unsecured claims.

7 262. The Agent is entitled to recover the Cook Islands Asset Transfers or the value of
8 thereof at the time of the transfer notwithstanding any subsequent decline in value pursuant to
9 California Civil Code §§ 3439.08, 3439.07 and 3439.05, and/or the analogous provisions of the
10 Illinois Uniform Fraudulent Transfer Act and/or applicable bankruptcy and foreign law.

11 WHEREFORE, the Agent prays for a judgment against the defendants identified in this
12 count avoiding and preserving for the benefit of the Agent the transfer of SK Foods International
13 and the Cook Islands Asset Transfers, and entering judgment for the value of the Cedenco
14 businesses at the time of the transfer of SK Foods International and the Cook Islands Asset
15 Transfers the amount of which to be proved at trial, plus interest, attorneys' fees and costs,
16 including, without limitation, pre-judgment and post-judgment interest, the exact amount to be
17 proven and determined at trial, and such other and further relief as this Court deems just and
18 equitable.
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21 **COUNT X: UNJUST ENRICHMENT AGAINST SALYER, SAS 1999 TRUST, CGS 1999 TRUST, SAS**
22 **2007 TRUST, CGS 2007 TRUST, STEFANIE A. SALYER, CAROLINE G. SALYER AND MONTEREY**
PENINSULA FARMING LLC FOR THE UNAUTHORIZED COOK ISLANDS ASSET TRANSFERS

23 263. The Agent incorporates by reference the preceding paragraphs of this Complaint
24 as though set forth fully herein, and makes the following allegations in this Count X in the
25 alternative to the counts set forth in Count IX above.

1 264. In light of the wrongful scheme identified in Count IX above, the Salyer
2 Defendants obtained benefits that should have otherwise been retained and used to repay the
3 creditors of SK Foods LLC.

4 265. Upon information and belief, Monterey LLC received consideration on account of
5 the transfer of SK Foods International to the Cook Islands trust that should have otherwise been
6 retained and used to repay the creditors of SK Foods LLC and inured to the benefit of the Agent.

7 266. Upon information and belief, the Salyer Defendants retain control and/or
8 possession of a portion of the Cook Islands Asset Transfers identified above, and Monterey LLC
9 retains the benefit of any consideration given on account of the transfer of SK Foods
10 International to the Cook Islands trust.

11 267. The Agent was entitled to the benefit, use, and value of the Cook Islands Asset
12 Transfers for the benefit of creditors and on account of its security interest.

13 268. It would be inequitable to permit the Salyer Defendants to retain the Cook Islands
14 Asset Transfers or to permit Monterey LLC to retain the benefits received on account of the
15 transfer of SK Foods International.

16 269. There is no written contract between the Salyer Defendants or Monterey LLC and
17 the Agent that provides the Agent with a claim for breach of the same against the Salyer
18 Defendants.

19 270. The Agent has an inadequate remedy at law and is entitled to a judgment against
20 the Salyer Defendants and Monterey LLC for unjust enrichment.

21 271. As a result, principles of equity dictate that the Salyer Defendants and Monterey
22 LLC be held liable for all damages suffered by the Agent as a result of the Cook Islands Asset
23 Transfers and the transfer of SK Foods International.

1 272. The Salyer Defendants have no equitable right to retain the Cook Islands Asset
2 Transfers, as it is value that would not have otherwise been received by the Salyer Defendants
3 and properly belongs to the Agent and the creditors of SK Foods LLC.

4 273. Monterey LLC has no equitable right to retain any value received on account of
5 the transfer of SK Foods International as it is value that would not have otherwise been received
6 by Monterey LLC and properly belongs to the Agent and the creditors of SK Foods LLC.

7 274. The Agent requests, *inter alia*, that the Court impose a constructive trust in favor
8 of the Agent as to the Cook Islands Asset Transfers and transfer of SK Foods International
9 identified above, the exact value to which the Trustee is entitled to be proven and determined at
10 trial.

11 275. The Agent was impoverished by the Cook Islands Asset Transfers and transfer of
12 SK Foods International because these payments were made during a time when SK Foods LLC
13 was experiencing financial difficulty, and because the Salyer Defendants have failed and refused
14 to return these transfers or their value.

15 276. There is a direct relationship between the Cook Islands Asset Transfers, the
16 transfer of SK Foods International and the impoverishment of the Agent.

17 277. The Salyer Defendants appreciated and had knowledge of the benefit that they
18 received regarding the Cook Islands Asset Transfers and transfer of SK Foods International
19 because they were made in an attempt to place control of Cedenco in the hands of Salyer,
20 Stefanie A. Salyer, Caroline G. Salyer, SAS 1999 Trust, CGS 1999 Trust, SAS 2007 Trust, CGS
21 2007 Trust and Salyer's grandchildren.

22 278. There is no valid reason why the Salyer Defendants are entitled to retain the Cook
23 Islands Asset Transfers or the value thereof as they knew that they were subject to the claims of
24 the Agent and have no equitable right to retain these transfers.

1 279. There is no valid reason why Monterey LLC is entitled to retain the value of the
2 transfer of SK Foods International as the Salyer Defendants knew that they were subject to the
3 claims of the Agent and they have no equitable right to retain these transfers.

4 280. Upon information and belief, the Salyer Defendants retain control and/or
5 possession of a portion of the Cook Islands Asset Transfers identified above.

6 281. The Agent is entitled to the benefit, use, and value of those transfers for its own
7 benefit and the benefit of creditors.

8 282. It would be inequitable to permit the Salyer Defendants to retain such transfers
9 and/or any distributions from the Cook Islands trust. Unless corrected by the Court, the Cook
10 Islands Asset Transfers or the value thereof would inure exclusively to the Salyer Defendants
11 benefit to the detriment of the Agent.

12 283. It would be inequitable to permit Monterey LLC to retain the value of the transfer
13 of SK Foods International and/or any other value received. Unless corrected by the Court, the
14 value of the transfer of SK Foods International by Monterey LLC would inure exclusively to the
15 Salyer Defendants benefit to the detriment of the Agent.

16 WHEREFORE, the Agent prays for a judgment against the defendants identified in this
17 count in an amount not less than the value of the Cook Islands Asset Transfers and transfer of SK
18 Foods International, to be proven at trial, together with the value of any additional transfer of
19 assets made by the Salyer Defendants to the Cook Islands on account of Cedenco or other
20 property subject to claims by the Agent, plus interest, attorneys' fees and costs, including,
21 without limitation, pre-judgment and post-judgment interest, the exact amount to be proven and
22 determined at trial, the imposition of a constructive trust on the assets of the Salyer Defendants
23 in the amounts described herein, and such other and further relief as this Court deems just and
24 equitable.

284. Further investigations may require the addition of other causes of action or additional defendants. The Trustee hereby reserves the right to assert claims for other and additional causes of action, including but not limited to recovery of additional transfers and refunds to the extent payments or refunds are discovered against the defendants named herein or any other defendants, either in this proceeding or in separate suits, adversary proceedings, or contested matters as may be appropriate.

James E. Spiotto
Ann E. Acker
Todd J. Dressel
James M. Heiser
CHAPMAN AND CUTLER LLP

TODD J. DRESSEL
Attorneys for Bank of Montreal

RJN EXHIBIT L

FILED

JUN 28 2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:

Case No. 09-29162-D-11

SK FOODS, L.P.,

Debtor.

BANK OF MONTREAL, as
Administrative Agent,

Adv. Pro. No. 11-2340-D

Plaintiff,

Docket Control No. NMM-1

v.

CARL SCOTT COLLINS, et al.,

DATE: June 22, 2011

Defendants.

Time: 9:30 a.m.

Dept: D

ORDER

The court having issued findings and analysis in the matter of Motion to Stay Adversary Proceeding, Docket Control No. NMM-1 (the "Motion"), which are included in the civil minutes, a copy of which is attached hereto, and good cause appearing,

IT IS HEREBY ORDERED that the Motion is granted and this adversary proceeding is stayed pending further order of this court.

Dated: June 27, 2011

 ROBERT S. BARDWIL

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
CIVIL MINUTES**

Adversary Title :	Bank of Montreal v. Collins et al	Case No : 09-29162 - D - 11
		Adv No : 11-02340 - D
		Date : 6/22/11
		Time : 10:00

Matter :	[11] - Motion/Application to Stay Adversary Proceeding [NMM-1] Filed by Defendants Monterey Peninsula Farming, LLC, Frederick Scott Salyer (dhes)	OPPOSED
-----------------	---	----------------

Judge :	Robert S. Bardwil
Courtroom Deputy :	Nancy Williams
Reporter :	Diamond Reporters
Department :	D

APPEARANCES for :

Movant(s) : Defendant's Attorney - Eric Safire

Respondent(s) : Trustee's Attorney - Kevin Coleman, Gregory Nuti
Creditor's Attorney - James Keowen, Paul Pascuzzi, Todd Dressel, Robert Asperger, James Deher, Micaehl Kuzmich, Warren Felger (phone), Caroline Newman (phone)

MOTION was :

ORDER TO BE PREPARED BY : Chambers

Final ruling:

This is the motion of defendants Scott Salyer and Monterey Peninsula Farms, LLC (collectively, the defendants) to stay this adversary proceeding. The Bank of Montreal (BMO), who is the plaintiff in this adversary proceeding as successor by assignment to the chapter 11 trustee in this case, opposes the motion. For the reasons set forth below, the court intends to grant the motion.

In April 2010, Salyer and various entities related to him (the Salyer Parties) filed a motion for a stay of certain other adversary proceedings. This adversary proceeding had not yet been commenced at that time. This court denied the April 2010 motion, based in large part on what it perceived to be significant distinctions between the factual allegations in the criminal indictment against Scott Salyer and those in the adversary proceedings. On appeal by the Salyer Parties, the district court for this district reversed and, on April 14, 2011, remanded to this court to decide, in the first instance, whether discovery from or testimony of Salyer or his criminal counsel is reasonably necessary [fn] to dispose of a particular matter before the Bankruptcy Court in the adversary proceedings. Sharp v. SSC Farms I, LLC, United States District Court, Eastern District of California, Civ. No. S-10-1492 LKK (the District Court Action), Order filed April 14, 2011, at 5:11-15. The court defined the applicable standard as follows: A matter is reasonably necessary if [the Salyer Parties] cannot adequately defend themselves in an adversary proceeding without evidence from Salyer or his criminal counsel. Id., 5:15-18.

As a technical matter, the district courts order does not pertain to this adversary proceeding, which had not yet been commenced at the time that order was issued. However, the court finds that the district courts initial ruling, in which it reversed this courts orders on the Salyer Parties first stay motions in the other adversary proceedings, pertains equally to the facts alleged in this adversary proceeding. See District Court Action, Order filed December 10, 2010. In other words, this court is of the opinion that if the district court

were to consider the facts alleged in this adversary proceeding, it would rule as it did in the other adversary proceedings.

Thus, the court will examine the issues in this particular adversary proceeding in light of the standard set forth by the district court in its April 14, 2011 order. In this adversary proceeding, BMO, as successor by assignment to the trustee, seeks to recover from Scott Salyer, his daughters and their respective trusts, and Cary Collins, alleged to be Salyers accountant, certain tax refunds Collins and/or Salyer received after the filing of the debtors bankruptcy petitions on account of unauthorized and improper tax returns filed by Collins on behalf of the debtors using fabricated figures or estimates. BMO alleges that Collins sent the refunds to overseas bank accounts over which Salyer had control, that Salyer directed and controlled Collins transfers of the refunds to assist in Salyers attempt to hide assets from creditors and to flee criminal prosecution, and that the transfers were made for the benefit of Salyer and his daughters.

As with the other adversary proceedings on this calendar, Salyer is at the center of the factual allegations here. In addition, he is a named defendant in this adversary proceeding. BMO, however, seeks to distinguish this case by pointing out that the defendants have not yet filed an answer or raised any affirmative defenses in this action. The Motions do not even offer speculation as to any future defense; they simply contain a reservation of rights to offer unspecified future defenses. Response and Objection to Movants Motion to Stay, filed June 1, 2011. (Response), 2:5-7.

The court does not agree that this is a significant distinguishing factor considering the allegations contained in BMOs complaint that Salyer essentially directed and controlled Collins actions for the benefit of himself and his daughters, the court rejects BMOs contention that it is impossible . . . to determine what is at issue in this matter or how Salyers testimony is relevant to any disputed claim or defense. Response, 1:14-16.

BMOs next arguments seek to set up higher standards than the one articulated by the district court. BMO contends the defendants must show, and have not shown, a particular defense for which they require evidence from Salyer. Absent any specific defense that Salyers testimony would purportedly support, the Movants have failed to make the requisite showing required by Judge Karlton that Salyers testimony is necessary or required for any defense they wish to raise. 5:6-8. Similarly,

[i]f Salyer chooses to assert his Fifth Amendment rights and remain silent, Movants can only be prejudiced if the testimony Salyer would have offered would have been helpful to their case. However, the Movants have made no effort to suggest how any such incriminating testimony could help them defend on the merits in this civil case. Id. 7:9-12.

This court does not interpret the district courts April 14, 2011 order as requiring the defendants to make either of these showings. Instead, the test this court is to apply is simple is discovery from or testimony of Salyer or his criminal counsel reasonably necessary for the defendants to adequately defend themselves in this adversary proceeding? BMO suggests Salyer is free to offer non-incriminating testimony, that the trustees allegations are based on publicly filed documents and center around issues of law, and that any valid defenses the defendants may have would be most likely substantiated by documentary evidence, and not by Salyers testimony. Response, 8:1-2. On the contrary, based on the factual allegations in the adversary proceeding, the court is satisfied that Salyer is central to the disputes raised; the court need not speculate on what other sources might be available if Salyer is not, and the defendants will not be required to disprove the existence or adequacy of such other sources.

BMOs remaining arguments were addressed in connection with the Salyer Parties first motion for a stay in the other adversary proceedings; they were discussed in this courts ruling on that motion, which has been reversed by the district court: (1) that Salyer has not properly invoked his privilege against self-incrimination because he has done nothing more than assert a blanket Fifth Amendment claim; (2) that the events involved in the adversary proceedings are distinct from those involved in the criminal indictment; (3) that if a stay is imposed, the plaintiff will have to sit idle for perhaps years, even if the defendants assets are being depleted; and (4) the Keating factors do not warrant the imposition of a stay (see *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324-25 (9th Cir. 1995)). Although the district court did remand the stay matter to this court, it in no way reversed its position on these arguments, which it rejected in the original appeal, and it did not indicate in any way that these issues were again on the table. As indicated above, this court believes the district court would rule on these issues in this adversary proceeding as it did in the other adversary proceedings; this court will not revisit them here.

The real problem with BMOs opposition to the motion is that it does not apply the standard set by the district court, but merely cites broad principles, draws broad conclusions, and charges the defendants with failing to provide sufficient particulars of the necessity of Salyers testimony. In the courts view, the factual allegations of the complaint are such that Salyers testimony (and possibly that of his criminal counsel) is likely to be central to resolution of the issues. Thus, the court concludes that evidence from Salyer and/or

his criminal counsel is reasonably necessary for the defendants to adequately defend themselves in this proceeding, and applying the district courts standard as set forth in its April 14, 2011 order, the court will grant the motion.

Finally, the Salyer Parties motions to stay certain other adversary proceedings in this case, which are also on this calendar, were met with a suggestion by the trustee that discovery could proceed against the employees, directors, officers, witnesses or other third parties related to the Defendants who would also have knowledge and information relevant to the defense without impairing Salyers Fifth Amendment rights. Sharp v. Salyer, Adv. No. 10-2014, Opposition to Defendants Supplemental Motion to Stay Adversary Proceedings, filed June 1, 2011, 20:17-20. The trustee quoted from an exchange at the April 11, 2011 district court hearing, and concluded in his opposition to the stay motion that all parties are in agreement that any stay that this Court might enter should not prevent the Trustee and the Defendants from taking discovery from other third parties, who have evidence related to the Adversary Proceedings. Id., 21:4-6. The Salyer Parties filed a reply to the trustees opposition, in which they did not take issue with this conclusion.

However, at the hearing on the present motion, the Salyer Parties stated that they do oppose permitting the trustee to take third-party discovery. The court has reviewed the transcript of the April 11, 2011 hearing in the district court, together with the order issued following that hearing, on April 14, 2011. Although the issue of third-party discovery was discussed at the hearing, there is nothing in the order to suggest that if this court finds that the Salyer Parties cannot adequately defend themselves in a particular adversary proceeding without discovery from or testimony of Salyer or his criminal counsel, it may nevertheless allow discovery to proceed against third parties. In short, this court has found, above, that Salyer is sufficiently at the center of the disputes in this adversary proceeding that the defendants cannot adequately defend themselves without testimony of or discovery from Salyer and/or his criminal counsel. Thus, the language of the April 14, 2011 order suggests to this court that the adversary proceeding should be stayed, with no exception for third-party discovery. Accordingly, the motion will be granted and the adversary proceeding will be stayed. The court will issue an appropriate order.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities at the addresses shown below or on the attached list.

SEE ATTACHED LIST

DATED: 6/28/11

By: 

Deputy Clerk

EDC 3-070 (Rev. 6/28/10)

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RJN EXHIBIT M

FILED

JUN 28 2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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3			
4			
5			
6	In re:)	Case No. 09-29162-D-11
7	SK FOODS, L.P.,)	
8)	
9	Debtor.)	
10	BANK OF MONTREAL, as)	Adv. Pro. No. 11-2339-D
11	Administrative Agent,)	
12	Plaintiff,)	Docket Control No. RSJ-1
13	v.)	
14	CALIFORNIA FRANCHISE TAX BOARD,)	DATE: June 22, 2011
15	et al.,)	Time: 9:30 a.m.
16	Defendants.)	Dept: D

ORDER

The court having issued findings and analysis in the matter of Motion to Stay Adversary Proceeding, Docket Control No. RSJ-1 (the "Motion"), which are included in the civil minutes, a copy of which is attached hereto, and good cause appearing,

IT IS HEREBY ORDERED that the Motion is granted and this adversary proceeding is stayed pending further order of this court.

Dated: June 27, 2011

Robert S. Bardwil
ROBERT S. BARDWIL
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
CIVIL MINUTES**

Adversary Title :	Bank of Montreal v. California Franchise Tax Board et al	Case No : 09-29162 - D - 11
		Adv No : 11-02339 - D
		Date : 6/22/11
		Time : 10:00

Matter :	[11] - Motion/Application to Stay Adversary Proceeding [RSJ-1] Filed by Interested Party Robert Pruett, Defendants Caroline G. Salyer, Stefanie A. Salyer (dhes) Modified on 5/18/2011 (dhes).	OPPOSED
-----------------	--	---------

Judge :	Robert S. Bardwil
Courtroom Deputy :	Nancy Williams
Reporter :	Diamond Reporters
Department :	D

APPEARANCES for :

Movant(s) : Defendant's Attorney - Eric Safire

Respondent(s) : Trustee's Attorney - Gregory Nuti, Kevin Coleman
Creditor's Attorney - James Keowen, Paul Pascuzzi, Todd Dressel, Robert Asperger, James Deher, Michael Kuzmich, Warren Felger (phone), Caroline Newman (phone)

MOTION was :

ORDER TO BE PREPARED BY : Chambers

Final ruling:

This is the motion of defendants Stefanie A. Salyer, Caroline G. Salyer, and Robert Pruett, in his capacity as trustee of the SAS 1999 Trust and of the CGS 1999 Trust (collectively, the defendants) to stay this adversary proceeding. The Bank of Montreal (BMO), who is the plaintiff in this adversary proceeding as successor by assignment to the chapter 11 trustee in this case, opposes the motion. For the reasons set forth below, the court intends to grant the motion.

In April 2010, Salyer and various entities related to him (the Salyer Parties) filed a motion for a stay of certain other adversary proceedings. This adversary proceeding had not yet been commenced at that time. This court denied the April 2010 motion, based in large part on what it perceived to be significant distinctions between the factual allegations in the criminal indictment against Scott Salyer and those in the adversary proceedings. On appeal by the Salyer Parties, the district court for this district reversed and, on April 14, 2011, remanded to this court to decide, in the first instance, whether discovery from or testimony of Salyer or his criminal counsel is reasonably necessary [fn] to dispose of a particular matter before the Bankruptcy Court in the adversary proceedings. Sharp v. SSC Farms I, LLC, United States District Court, Eastern District of California, Civ. No. S-10-1492 LKK (the District Court Action), Order filed April 14, 2011, at 5:11-15. The court defined the applicable standard as follows: A matter is reasonably necessary if [the Salyer Parties] cannot adequately defend themselves in an adversary proceeding without evidence from Salyer or his criminal counsel. Id., 5:15-18.

As a technical matter, the district courts order does not pertain to this adversary proceeding, which had not yet been commenced at the time that order was issued. However, the court finds that the district courts

initial ruling, in which it reversed this courts orders on the Salyer Parties first stay motions in the other adversary proceedings, pertains equally to the facts alleged in this adversary proceeding. See District Court Action, Order filed December 10, 2010. In other words, this court is of the opinion that if the district court were to consider the facts alleged in this adversary proceeding, it would rule as it did in the other adversary proceedings.

Thus, the court will examine the issues in this particular adversary proceeding in light of the standard set forth by the district court in its April 14, 2011 order. In this adversary proceeding, BMO, as successor by assignment to the trustee, seeks to recover from the California Franchise Tax Board payments alleged to have been made by the debtors, SK Foods and RHM Industrial Specialty Foods, Inc., on account of Scott Salyers and his daughters income tax obligations for which the debtors had no liability. BMO also seeks to recover from Salyer, his daughters, and their respective trusts the value of the transfers, including certain tax refunds. BMO alleges in its complaint that all the payments in question were made at Salyers direction.

As with the other adversary proceedings on this calendar, Salyer is at the center of the factual allegations here. BMO, however, seeks to distinguish this case by focusing on the presence of the Franchise Tax Board an entity completely unrelated to Scott Salyer as the primary defendant. This case is primarily against the California Franchise Tax Board (the FTB), who was the initial transferee of tax payments made by the Debtors to satisfy the personal tax obligations of the Movants. The Movants are only named in this case as subsequent transferees and beneficiaries of these transfers. Response and Objection to Movants Motion to Stay, filed June 1, 2011 (Response), 1:27-2:3. As a second point of distinction, BMO points out that the defendants have not yet filed an answer or raised any affirmative defenses in this action. The Motions do not even offer speculation as to any future defense; they simply contain a reservation of rights to offer unspecified future defenses. Response, 2:11-12.

The court does not agree that these are significant distinguishing factors. First, neither the letter nor the spirit of the district courts order suggests this court is to consider whether the parties moving for a stay are primary or secondary defendants. The defendants are clearly key players in this proceeding whose rights are to be protected in the face of Salyers invocation of his Fifth Amendment privilege. Further, BMO itself recognizes that the Franchise Tax Board might file cross-claims against the defendants; for this reason, the court rejects BMOs suggestion that the action be allowed to proceed against the Franchise Tax Board. Second, the fact that the defendants have not yet responded to BMOs complaint is not a determining issue considering the allegations contained in BMOs complaint that the debtors made all the payments in question at Salyers direction, the court rejects BMOs contention that it is impossible . . . to determine what is at issue in this matter or how Salyers testimony is relevant to any disputed claim or defense. Response, 1:16-18.

BMOs next arguments seek to set up higher standards than the one articulated by the district court. BMO contends the defendants must show, and have not shown, a particular defense for which they require evidence from Salyer. Absent any specific defense that Salyers testimony would purportedly support, the Movants have failed to make the requisite showing required by Judge Karlton that Salyers testimony is necessary or required for any defense they wish to raise. 5:6-8. Similarly,

if Salyer chooses to assert his Fifth Amendment rights and remain silent, Movants can only be prejudiced if the testimony Salyer would have offered would have been helpful to their case. However, the Movants have made no effort to suggest how any such incriminating testimony could help them defend on the merits in this civil case. Id. 7:9-12.

This court does not interpret the district courts April 14, 2011 order as requiring the defendants to make either of these showings. Instead, the test this court is to apply is simple is discovery from or testimony of Salyer or his criminal counsel reasonably necessary for the defendants to adequately defend themselves in this adversary proceeding? BMO suggests Salyer is free to offer testimony that does not incriminate himself, and that any valid defenses the defendants may have would be most likely substantiated by documentary evidence or expert testimony regarding solvency, and not by Salyers testimony. Response, 7:27-8:2. On the contrary, based on the factual allegations in the adversary proceeding, the court is satisfied that Salyer is central to the disputes raised; the court need not speculate on what other sources might be available if Salyer is not, and the defendants will not be required to disprove the existence or adequacy of such other sources.

BMOs remaining arguments were addressed in connection with the Salyer Parties first motion for a stay in the other adversary proceedings; they were discussed in this courts ruling on that motion, which has been reversed by the district court: (1) that Salyer has not properly invoked his privilege against self-incrimination because he has done nothing more than assert a blanket Fifth Amendment claim; (2) that the events involved in the adversary proceedings are distinct from those involved in the criminal indictment; (3) that if a stay is imposed, the plaintiff will have to sit idle for perhaps years, even if the defendants assets

are being depleted; and (4) the Keating factors do not warrant the imposition of a stay (see *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324-25 (9th Cir. 1995)). Although the district court did remand the stay matter to this court, it in no way reversed its position on these arguments, which it rejected in the original appeal, and it did not indicate in any way that these issues were again on the table. As indicated above, this court believes the district court would rule on these issues in this adversary proceeding as it did in the other adversary proceedings; this court will not revisit them here.

The real problem with BMOs opposition to the motion is that it does not apply the standard set by the district court, but merely cites broad principles, draws broad conclusions, and charges the defendants with failing to provide sufficient particulars of the necessity of Salyers testimony. In the courts view, the factual allegations of the complaint are such that Salyers testimony (and possibly that of his criminal counsel) is likely to be central to resolution of the issues. Thus, the court concludes that evidence from Salyer and/or his criminal counsel is reasonably necessary for the defendants to adequately defend themselves in this proceeding, and applying the district courts standard as set forth in its April 14, 2011 order, the court will grant the motion.

Finally, the Salyer Parties motions to stay certain other adversary proceedings in this case, which are also on this calendar, were met with a suggestion by the trustee that discovery could proceed against the employees, directors, officers, witnesses or other third parties related to the Defendants who would also have knowledge and information relevant to the defense without impairing Salyers Fifth Amendment rights. *Sharp v. Salyer*, Adv. No. 10-2014, Opposition to Defendants Supplemental Motion to Stay Adversary Proceedings, filed June 1, 2011, 20:17-20. The trustee quoted from an exchange at the April 11, 2011 district court hearing, and concluded in his opposition to the stay motion that all parties are in agreement that any stay that this Court might enter should not prevent the Trustee and the Defendants from taking discovery from other third parties, who have evidence related to the Adversary Proceedings. *Id.*, 21:4-6. The Salyer Parties filed a reply to the trustees opposition, in which they did not take issue with this conclusion.

However, at the hearing on the present motion, the Salyer Parties stated that they do oppose permitting the trustee to take third-party discovery. The court has reviewed the transcript of the April 11, 2011 hearing in the district court, together with the order issued following that hearing, on April 14, 2011. Although the issue of third-party discovery was discussed at the hearing, there is nothing in the order to suggest that if this court finds that the Salyer Parties cannot adequately defend themselves in a particular adversary proceeding without discovery from or testimony of Salyer or his criminal counsel, it may nevertheless allow discovery to proceed against third parties. In short, this court has found, above, that Salyer is sufficiently at the center of the disputes in this adversary proceeding that the defendants cannot adequately defend themselves without testimony of or discovery from Salyer and/or his criminal counsel. Thus, the language of the April 14, 2011 order suggests to this court that the adversary proceeding should be stayed, with no exception for third-party discovery. Accordingly, the motion will be granted and the adversary proceeding will be stayed. The court will issue an appropriate order.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

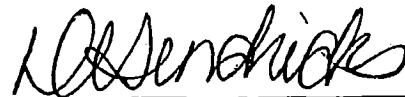
CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities at the addresses shown below or on the attached list.

SEE ATTACHED LIST

DATED: 6/28/11

By:



Deputy Clerk

EDC 3-070 (Rev. 6/28/10)

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RJN EXHIBIT N

2011-02337

FILED

May 04, 2011

CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

0003469714

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7 Attorneys for Bradley D. Sharp,
Chapter 11 Trustee

8
9
10 **UNITED STATES BANKRUPTCY COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**
12 **SACRAMENTO DIVISION**

13 In re:

14 SK FOODS, L.P., a California limited
partnership,

15 Debtor.

Case No. 09-29162-D-11

Chapter 11

Adversary Proceeding No.

16 BRADLEY D. SHARP, Chapter 11 Trustee,

17 Plaintiff,

18 vs.

19 SKPM Corp., Inc., SSC&L 2007 Trust,
20 Monterey Peninsula Farms, LLC, Fredrick
Scott Salyer aka Scott Salyer in his capacity
21 as trustee of the Scott Salyer Revocable
Trust and trustee of the SSC&L 2007 Trust,
22 Scott Salyer Revocable Trust, Fast Falcon,
LLC, Henry John Heath, and Does 1-5,

23 Defendants.

COMPLAINT FOR:

1. AVOIDANCE AND RECOVERY OF
TRANSFERS OF PROPERTY
PURSUANT TO 11 U.S.C. §§ 544, 548,
AND 550 AND CALIFORNIA CIVIL
CODE §§3439.04, 3439.05, AND
3439.07;
2. WILLFUL VIOLATION OF THE
AUTOMATIC STAY

25
26 Bradley D. Sharp (the "Trustee" or "Plaintiff"), the duly appointed and acting chapter
27 11 trustee for substantively consolidated debtors SK Foods, L.P., a California limited
28 partnership ("SK Foods"), and RHM Industrial/Specialty Foods, Inc., a California corporation,

PHDATA 3369682.1

COMPLAINT

SCHNADER HARRISON SEGAL & LEWIS LLP
ONE MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104-5501
TELEPHONE: (415) 364-6700
FAX: (415) 364-6785

d/b/a Colusa County Canning Co. ("RHM" and collectively with SK Foods, the "Debtors"),
alleges as follows:

INTRODUCTION

1. By this complaint, the Trustee seeks to recover certain transfers of SK Foods' property to the extent that such transfers occurred. Specifically, the Trustee seeks to recover SK Foods' equity interest in SK Foods Australia Pty Ltd. ("Cedenco") that was allegedly transferred to or by various entities owned and controlled by Scott Salyer as set forth below. Additionally, the Trustee seeks to recover an intercompany claim for a loan that SK Foods made to Cedenco that was also allegedly transferred to or by various entities owned and controlled by Scott Salyer as set forth below.

2. In connection with attempting to effectuate the alleged transfers, Henry John Heath, a former director of Cedenco took actions post-petition in an attempt to effectuate the alleged transfers describes herein in violation of 11 U.S.C. § 362.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(H).

4. Venue properly lies in this judicial district pursuant to 28 U.S.C. §1409(a) in that the instant adversary proceeding is related to the above-captioned case under Title 11 of the United States Code.

THE PARTIES

5. Plaintiff Bradley D. Sharp is the duly appointed and acting Chapter 11 Trustee in the cases of SK Foods, L.P., a California limited partnership ("SK Foods"), and RHM Industrial Specialty Foods, Inc., a California corporation, d/b/a Colusa County Canning Co. ("RHM") (collectively, "the Debtors").

6. Fredrick Scott Salyer aka Scott Salyer ("Salyer") is an individual residing in the State of California. The Trustee is informed and believes and thereon alleges that Salyer is trustee of Scott Salyer Revocable Trust and the SSC&L 2007 Trust.

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7. The Trustee is informed and believes and thereon alleges that the Scott Salyer Revocable Trust ("SSRT") is a California trust whose beneficiary is Salyer. SSRT is the sole limited partner of SK Foods.

8. The Trustee is informed and believes and thereon alleges that SKPM Corporation ("SKPM"), a California corporation, is the general partner of SK Foods and is wholly owned by the Scott Salyer Revocable Trust.

9. The Trustee is informed and believes and thereon alleges that the SSC&L 2007 Trust ("SSC&L") is a California trust whose beneficiary is Salyer.

10. The Trustee is informed and believes and thereon alleges that Fast Falcon, LLC is an entity of unknown capacity whose address is 3450 21st Street, San Francisco, California 94104. Cary S. Collins is its manager.

11. Monterey Peninsula Farms, LLC ("MPF") is a California limited liability company. Salyer, SKPM, SSRT, SSC&L, MPF, Fast Falcon, and MPF are collectively referred to as the "Salyer Defendants".

12. Henry John Heath ("Heath") is an individual and resident of Australia. Heath is a former director of Cedenco.

13. The true names and capacities of Defendants DOES 1 through 5, inclusive, are unknown to Plaintiff at this time. Therefore, the Trustee sues said Defendants by such fictitious names. The Trustee believes that each of these fictitiously named Defendants is responsible in some manner for the occurrences alleged herein and is believed to have proximately caused damages. The Trustee will seek leave of Court to amend this Complaint to insert the true names and capacities of said fictitiously named Defendants when the same have been ascertained.

GENERAL ALLEGATIONS

14. On May 5, 2009 (the "Petition Date"), involuntary bankruptcy petitions were filed against Debtors SK Foods and RHM. Thereafter, on May 7, 2009, the Debtors filed a voluntary petition for relief (the "Bankruptcy Case") under chapter 11 of Title 11 of the United

1 States Code, 11 U.S.C. § 101, et. seq. (the "Bankruptcy Code"). The Plaintiff was appointed
2 the chapter 11 trustee in the Bankruptcy Case and presently serves in that capacity.

3 The Intercompany Loan

4 15. On February 27, 2002, SK Foods transferred US\$6,250,000.00 from Mid-
5 Peninsula Bank to Banc One, NA Australian Branch for the benefit of Cedenco. At the
6 exchange rate at that time, that resulted in a deposit of AU\$12,131,152.95. Cedenco entered
7 this transaction on its books as a loan from SK Foods. Scott Salyer signed a promissory note
8 payable to SK Foods from Cedenco dated February 25, 2002 for AU\$12,131,152.95
9 ("Intercompany Loan").

10 16. Cedenco at all times treated the Intercompany Loan as a loan from SK Foods.

11 17. The amount owing on the Intercompany Loan as of the date of this complaint is
12 in excess of US\$17,074,283.00 plus accruing interest and other charges.

13 Equity Interest in Cedenco

14 18. In January 2002, Cedenco issued 100 shares to SK Foods and SK Foods
15 consented to becoming a member of Cedenco. Attached as Exhibit A is Cedenco's statutory
16 register indicating SK Foods ownership of 100 shares of Cedenco.

17 19. On February 28, 2002, SK Foods instructed Banc One, NA Australian Branch
18 to transfer AU\$12,040,438.02 from Cedenco to Cerebosa, the then other interest holder in
19 Cedenco in full satisfaction of Cerebosa's interest in Cedenco. Thereafter, SK Foods held
20 99.01% of the equity in Cedenco ("Equity Interest").

21 Liquidation of Cedenco

22 20. Cedenco is subject to liquidation proceedings in Australia which has resulted in
23 its sale ("Australian Liquidation"). The Australian Liquidation has produced proceeds
24 sufficient to pay all creditors of Cedenco in full, including the Intercompany Loan, and provide
25 payment on account of SK Food's Equity Interest in an amount in excess of \$32 million.

26 21. The Australian Liquidation is currently being administered by Sheahan Lock
27 Partners in Adelaide, Australia ("Liquidator"). The Liquidator has requested anyone asserting
28 a claim to the proceeds of the Australian Liquidation to submit such claims to the Liquidator.

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1 22. The Trustee has submitted claims to the Liquidator for payment on account of
2 the Intercompany Loan and the Equity Interest.

3 23. The Salyer Defendants have also submitted claims to the Liquidator for
4 payment on account of the Intercompany Loan and Equity Interest claiming SK Foods
5 transferred these assets pre-petition as set forth below.

6 **ALLEGED TRANSFER OF INTERCOMPANY LOAN**

7 24. The Trustee is informed and believe and thereon alleges that the Salyer
8 Defendants claim SK Foods transferred the Intercompany Loan to SSC&L ("Initial
9 Intercompany Loan Transfer"). Although the Salyer Defendants do not disclose the date of the
10 alleged transfer, the earliest this transfer could have occurred, if at all, is December 18, 2007.

11 25. The Trustee is informed and believe and thereon alleges that SSC&L did not
12 pay any consideration to SK Foods for the Initial Intercompany Loan Transfer.

13 26. The Trustee is informed and believe and thereon alleges that the Salyer
14 Defendants claim that SSC&L thereafter transferred the Intercompany Loan to Fast Falcon
15 ("Subsequent Intercompany Loan Transfer").

16 27. The Trustee is informed and believe and thereon alleges that Fast Falcon did not
17 pay any consideration to SSC&L for the Subsequent Intercompany Loan Transfer.

18 28. The Trustee contends the Initial Intercompany Loan Transfer and Subsequent
19 Intercompany Loan Transfer (collectively, "Loan Transfers") each were invalid and of no
20 effect such that SK Foods at all relevant times retained complete ownership and title to the
21 Intercompany Loan. Whether the Loan Transfers transferred the Intercompany Loan is an
22 issue being decided in the context of the Australian Liquidation. In the event the Liquidator
23 finds either or both of the Loan Transfers valid, then the Trustee may avoid either or both Loan
24 Transfer as fraudulent conveyances as set forth below.

25 **ALLEGED TRANSFER OF THE EQUITY INTEREST**

26 29. The Trustee is informed and believe and thereon alleges that the Salyer
27 Defendants claim SK Foods transferred the Equity Interest to SKPM and SSRT, transferring
28

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1 54.45% to SKPM ("SKPM Interest") and 45.55% to SSRT ("SSRT Interest"). The transfer of
 2 the SKPM Interest and SSRT Interest shall be referred to collectively as the "Initial Equity
 3 Transfer". The Initial Equity Transfer could not have occurred, if at all, prior to March 28,
 4 2008.

5 30. The Trustee is informed and believe and thereon alleges that SK Foods did not
 6 receive any consideration for the Initial Equity Transfer.

7 31. The Trustee is informed and believe and thereon alleges that the Salyer
 8 Defendants claim that SKPM thereafter transferred the SKPM Interest to MPF on or about
 9 January 17, 2009 (the "SKPM Subsequent Transfer").

10 32. The Trustee is informed and believe and thereon alleges that SKPM did not
 11 receive any consideration in exchange for the SKPM Subsequent Transfer.

12 33. The Trustee is informed and believe and thereon alleges that the Salyer
 13 Defendants claim that SSRT thereafter transferred the SSRT Interest to MPF on or about
 14 January 17, 2009 (the "SSRT Subsequent Transfer").

15 34. The Trustee is informed and believe and thereon alleges that SSRT did not
 16 receive any consideration in exchange for the SSRT Subsequent Transfer.

17 35. The Trustee is informed and believe and thereon alleges that the Salyer
 18 Defendants claim that MPF thereafter transferred the SKPM Interest and SSRT Interest to Fast
 19 Falcon on or about June 29, 2009 (collectively, the "MPF Subsequent Transfers").

20 36. The Trustee is informed and believe and thereon alleges that MPF did not
 21 receive any consideration in exchange for the MPF Subsequent Transfers.

22 37. The Trustee contends the Initial Equity Transfer, SKPM Subsequent Transfer,
 23 SSRT Subsequent Transfer and MPF Subsequent Transfer (collectively, "Equity Transfers")
 24 each were invalid and of no effect such that SK Foods at all relevant times retained complete
 25 ownership and title to the Australian Equity. Whether the Equity Transfers transferred the
 26 Australian Equity is an issue being decided in the context of the Australian Liquidation. In the
 27 event the Liquidator finds any or all of the Equity Transfers valid, then the Trustee may avoid
 28 any and all of the Equity Transfers as fraudulent conveyances as set forth below.

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COUNT I

11 U.S.C. §§548(a)(1)(B) and 550(a) and Cal. Civil Code §§3439.05 and 3439.07
Against Defendant SSC&L 2007 Trust, Fast Falcon and Does 1 through 5

44. To the extent the Loan Transfers occurred, the Trustee is entitled to avoid and recover the Loan Transfers or the value of the Loan Transfers from SSC&L and Fast Falcon

1 for the benefit of the estate pursuant to the provisions of 11 U.S.C. §§548(a)(1)(B) and 550(a)
2 and California Civil Code §§3439.07 and 3439.05.

3 Wherefore, the Trustee prays for judgment as set forth below.

4 **COUNT II**

5 **To Avoid and Recover Fraudulent Transfers
Equity Transfers**

6 **11 U.S.C. §§548(a)(1)(B) and 550(a) and Cal. Civil Code §§3439.05 and 3439.07
Against Defendants SKPM, SSRT, MPF, Fast Falcon, and Does 1 through 5**

7 45. The Trustee hereby refers to Paragraphs 1 through 44, inclusive, and by such
8 reference hereby incorporates and re-alleges them herein.

9 46. To the extent they occurred, the Equity Transfers were transfers of SK Foods'
10 property.

11 47. To the extent they occurred, the Equity Transfers were made within four years
12 of the date of the Petition.

13 48. To the extent they occurred, the Equity Transfers were made without SK Foods
14 receiving a reasonably equivalent value from SKPM.

15 49. To the extent the Equity Transfers occurred, SK Foods was insolvent on the
16 date of the Initial Equity Transfer was made or became insolvent as a result of the Initial
17 Equity Transfer, or was engaged in business or a transaction, or was about to engage in
18 business or a transaction, for which any property remaining with SK Foods was unreasonably
19 small capital, or intended to incur, or believed that SK Foods would incur debts that would be
20 beyond SK Foods' ability to pay such debts as they matured.

21 50. To the extent the Equity Transfers occurred, Plaintiff is entitled to avoid and
22 recover the Equity Transfers or the value of the Equity Transfers from SSC&L, SSRT, MPF
23 and Fast Falcon for the benefit of the estate pursuant to the provisions of 11 U.S.C.
24 §§548(a)(1)(B) and 550(a) and California Civil Code §§3439.07 and 3439.05.

25 **COUNT III**

26 **Damages for Willful Violation of the Automatic Stay Pursuant to 11 U.S.C. § 362
Against Defendant Henry John Heath and Does 1 through 5**

27 51. The Trustee hereby refers to Paragraphs 1 through 50, inclusive, and by such
28 reference hereby incorporates and re-alleges them herein.

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TELEPHONE: (415) 364-6700
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Wherefore, the Trustee prays for judgment as set forth below.

14 WHEREFORE, the Trustee prays for judgment as follows:

- ## COMPLAINT

1 ii. For judgment against SKPM, SSRT, MPF, and Fast Falcon in an amount
 2 equal to the value of the Equity Transfers to be proved at trial together
 3 with prejudgment and post judgment interest thereon at the legal rate
 4 allowed under 28 U.S.C. §1961 from the date of the Initial Equity
 5 Transfer;

6 3. On the Third Count against Heath and Does 1 through 5:

7 i. For judgment finding Heath and Does 1 through 5 willfully violated 11
 8 U.S.C. § 362(a) and awarding damages according to proof at trial

9 4. For costs of suit herein;

10 5. For such other and further relief as the Court may deem just and proper.

11
 12 Dated: May 4, 2011

SCHNADER HARRISON SEGAL & LEWIS LLP

13
 14 /s/ Gregory C. Nuti

15 Gregory C. Nuti
 16 Kevin W. Coleman
 17 Attorneys for Bradley D. Sharp,
 18 Chapter 11 Trustee
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EXHIBIT A

SK Foods Australia Pty Ltd

A.C.N.: 099 245 735

Members Register 7/03/2002

Ordinary

SK Foods LP

Fair Value	Amount Due	Certificate Number	Transaction		Registration Date	Number		Balance Held	
			Type	Date		Acquired	Disposed	Beneficially	Non-Beneficially
\$1.00	\$0.00	1	Allotment	11/01/2002	11/01/2002	100		100	

01/09/2002 23:03

83165559bb

SK FOODS

PAGE 01

SK Foods Australia Pty Ltd (Company)

Member's consent

1 Consent to become a member

SK Foods LP of Suite 203, 300 Sky Park Drive, Monterey, California, USA 93940 consents to become a member of the Company and being named in an application for registration of the Company as a proposed member.

2 Agreement to the terms of the constitution

SK Foods LP agrees to the terms of the proposed constitution of the Company dated January 2002.

3 Agreement to take up shares

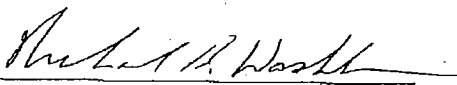
SK Foods LP agrees to take up 100 shares in the capital of the Company at a price of \$1.00 per share and agrees to pay the full amount for the shares on registration of the Company.

Dated:

Signed by

SK Foods LP

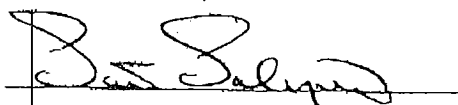
by:



Secretary/Director

Richard B. Washburn

Name (please print)



Director

Scott Salyer

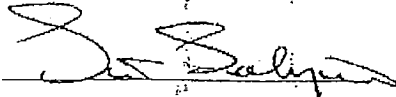
Name (please print)

- (c) The offices and property that I hold where duties or interests might be created in conflict with my duties or interests as a director of the company, and the nature, character and extent of the conflict, are:
- (d) Details of the nature and extent of interests in matters that relate to the affairs of the company not disclosed above are as follows:

3 Notification of change in personal details

I agree to notify the company of any change in my personal details within 7 days after the change.⁴

Signature:



Date:

1-10-02

¹ If you need more space attach a separate page. This information in paragraph 1 of the Consent is required so that the company can notify the ASIC of the personal details of each director of the company within 14 days of appointment, as required by section 205B of the Corporations Act.

A company will be in breach of section 201D of the Corporations Act if a person does not give the company a signed consent to act as a director of the company before being appointed.

² A person's address must be their usual residential address, unless either:

- (a) their name, but not their residential address, is on an electoral roll under the Commonwealth Electoral Act 1918 because of section 104 of that Act (which allows a person to request that his or her name not appear on an electoral roll on the grounds that it would place that person or a member of that person's family at risk); or
- (b) their name is not on an electoral roll under that Act and the ASIC has determined, in writing, that including their residential address in the notices required by section 205B of the Corporations Act would put at risk their personal safety or that of their family. A person may apply to use an alternative address using form 378: (see section 205D(2)).

If either (a) or (b) applies, you are entitled to provide an alternative address which must be in Australia and be one at which documents can be served on you. A person who is entitled to use an alternative address

EXHIBIT B

Australian Securities &
Investments Commission

Form 484
Corporations Act 2001

Change to company details

Sections A, B or C may be lodged independently with this signed cover page to notify ASIC of:

A1 Change of address
A2 Change of name - officeholders and proprietary
company members
A3 Change - ultimate holding company

B1 Cease company officeholder
B2 Appoint company officeholder
B3 Special purpose company

C1 Cancellation of shares
C2 Issue of shares
C3 Change to share structure
C4 Changes to the register of members for proprietary
companies

If there is insufficient space in any section of the form, you may photocopy the relevant page(s) and submit as part of this lodgement

Company details

Refer to guide for information about
corporate key

Company name
SK FOODS AUSTRALIA PTY LTD
ACN/ABN
099 245 735
Corporate key
52792603

Lodgement details

Who should ASIC contact if there is a query about this form?

Firm/organisation
DELOITTE PRIVATE PTY LIMITED
Contact name/position description

ASIC registered agent number (if applicable)
321
Telephone number

Postal address or DX address
LEVEL 9 550 BOURKE STREET
MELBOURNE, VIC, 3000
Total number of pages including this cover sheet
1

Signature

This form must be signed by a current officeholder of the company.

I certify that the information in this cover sheet and the attached sections of this form are true and complete.

Name
HEATH, HENRY JOHN

Capacity

☒ Director
☐ Company secretary

Signature

Date signed

1 **0** **0** **7** **0** **9**
[D] [M] [Y] [M] [Y] [Y]

Lodgement

Send completed and signed forms to:
Australian Securities and Investments Commission,
PO Box 4000, Gippsland Mail Centre VIC 3841.

Or lodge the form electronically by visiting the ASIC website
www.asic.gov.au

For help or more information

Telephone **1300 300 630**
Email info.enquiries@asic.gov.au
Web www.asic.gov.au

ASIC Form 484

Reference: 0815055

6 September 2007

Trace:

Cover page

C4 Changes to the register of members for proprietary companies

Use this section to notify changes to the register of members for your proprietary company (changes to the shareholdings of members):

- If there are 20 members or less in a share class, all changes need to be notified
- If there are more than 20 members in a share class, only changes to the top twenty need be notified (s 78B)
- If shares are jointly owned, you must also provide names and addresses of all joint owners on a separate sheet (annexure), clearly indicating the share class and with whom the shares are jointly owned

The changes apply to
Please indicate the name and address
of the member whose shareholding has
changed

☐ Family name Given names

OR

☒ Company name
SK PM CORPORATION

ACN/ARBN/ABN

Office, unit, level, or PO Box number
21 LOWER RAGSDALE DRIVE

Street number and Street name
MONTEREY

Suburb/City State/Territory
CALIFORNIA 93940

Postcode Country (if not Australia)
UNITED STATES OF AMERICA

Earliest date of change
Please indicate the earliest date that any
of the following changes occurred.

Date of change
0 1 / 1 1 / 0 6
[D] [D] [M] [M] [Y] [Y]

The changes are

Share class code	Shares increased by ... (number)	Shares decreased by ... (number)	Total number now held	Total \$ paid on these shares	Total \$ unpaid on these shares	Fully paid (y/n)	Beneficially held (y/n)	Top 20 member (y/n)
ORD	55		55	3,490,058.55	0.00	Yes	Yes	

Date of entry of member's name in
register
(New members only)

Date of entry
0 1 / 1 1 / 0 6
[D] [D] [M] [M] [Y] [Y]

C4 Changes to the register of members for proprietary companies

Use this section to notify changes to the register of members for your proprietary company (changes to the shareholdings of members):

- If there are 20 members or less in a share class, all changes need to be notified
- If there are more than 20 members in a share class, only changes to the top twenty need be notified (s178B)
- If shares are jointly owned, you must also provide names and addresses of all joint owners on a separate sheet (annexure), clearly indicating the share class and with whom the shares are jointly owned

The changes apply to
Please indicate the name and address
of the member whose shareholding has
changed

<input checked="" type="checkbox"/> Family name	Given names
SALYER	SCOTT
OR	
<input type="checkbox"/> Company name	
ACN/ABN/ABN	
Office, unit, level, or PO Box number	
200 SKY PARK DRIVE	
Street number and Street name	
MONTEREY	
Suburb/City	State/Territory
CALIFORNIA 93940	
Postcode	Country (if not Australia)
	UNITED STATES OF AMERICA

Earliest date of change
Please indicate the earliest date that any
of the following changes occurred.

Date of change

0	1	1	1	0	6
[D]	[D]	[M]	[M]	[Y]	[Y]

The changes are

Share class code	Shares increased by ... (number)	Shares decreased by ... (number)	Total number now held	Total \$ paid on these shares	Total \$ unpaid on these shares	Fully paid (y/n)	Beneficially held (y/n)	Top 20 member (y/n)
ORD	45		45	2,855,502.45	0.00	Yes	No	

Date of entry of member's name in
register
(New members only)

Date of entry

0	1	1	1	0	6
[D]	[D]	[M]	[M]	[Y]	[Y]

C4 Changes to the register of members for proprietary companies

Use this section to notify changes to the register of members for your proprietary company (changes to the shareholdings of members):

- If there are 20 members or less in a share class, all changes need to be notified
- If there are more than 20 members in a share class, only changes to the top twenty need be notified (s178B)
- If shares are jointly owned, you must also provide names and addresses of all joint owners on a separate sheet (annexure), clearly indicating the share class and with whom the shares are jointly owned

The changes apply to
Please indicate the name and address
of the member whose shareholding has
changed

☐ Family name Given names

OR

☒ Company name

SK FOODS LP

ACN/ARBN/ABN

Office, unit, level, or PO Box number

SUITE 203

Street number and Street name

300 SKY PARK DRIVE

Suburb/City State/Territory

MONTEREY, CALIFORNIA, 93940

Postcode Country (If not Australia)

_____ UNITED STATES OF AMERICA

Earliest date of change
Please indicate the earliest date that any
of the following changes occurred.

Date of change

[D] [D] [M] [M] [Y] [Y]

The changes are

Share class code	Shares increased by ... (number)	Shares decreased by ... (number)	Total number now held	Total \$ paid on these shares	Total \$ unpaid on these shares	Fully paid (y/n)	Beneficially held (y/n)	Top 20 member (y/n)
ORD		100	0	0.00	0.00	Yes	Yes	

Date of entry of member's name in
register
(New members only)

Date of entry

[D] [D] [M] [M] [Y] [Y]

RJN EXHIBIT O

FILED

JUN 28 2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:

SK FOODS, L.P.,

Debtor.

BRADLEY D. SHARP, Chapter 11
Trustee,

Plaintiff,

v.

SSC FARMS I, LLC, et al.,

Defendants.

Case No. 09-29162-D-11

Adv. Pro. No. 09-2692-D

Docket Control No. MSS-2

DATE: June 22, 2011

Time: 9:30 a.m.

Dept: D

ORDER

The court having issued findings and analysis in the matter of Defendants' Supplemental Motion to Stay Adversary Proceedings, Docket Control No. MSS-2 (the "Motion"), which are included in the civil minutes, a copy of which is attached hereto, and good cause appearing,

IT IS HEREBY ORDERED that:

1. The Motion is granted and this adversary proceeding is stayed pending further order of this court, except as set forth below;


/ / /

/ / /

1 2. The stay shall not prevent actions by any party to
2 investigate the extent of compliance or non-compliance with the
3 preliminary injunction filed March 20, 2010 in this adversary
4 proceeding, as the same has been modified by orders of this court
5 filed October 13, 2010; January 20, 2011; February 16, 2011; May
6 1, 2011; and May 10, 2011 (collectively, the "Preliminary
7 Injunction Orders");

8 3. The stay shall not prevent actions by the plaintiff
9 necessary to ensure the Preliminary Injunction Orders are
10 complied with, including actions seeking to modify the
11 Preliminary Injunction Orders or seeking additional relief from
12 this court intended to ensure that the assets covered by the
13 Preliminary Injunctions Orders are preserved.

14 Dated: June 27, 2011


15 ROBERT S. BARDWIL
16 United States Bankruptcy Judge
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
CIVIL MINUTES**

Adversary Title :	Sharp v. SSC Farms I, LLC et al	Case No : 09-29162 - D - 11
		Adv No : 09-02692 - D
		Date : 6/22/11
		Time : 9:30

Matter :	[229] - Supplemental Motion/Application to Stay Adversary Proceedings [MSS-2] Filed by Defendants SSC Farming, LLC., SSC Farms I, LLC, SSC Farms II, LLC. (dhes)	OPPOSED
-----------------	--	---------

Judge :	Robert S. Bardwil
Courtroom Deputy :	Nancy Williams
Reporter :	Diamond Reporters
Department :	D

APPEARANCES for :

Movant(s) :

Defendant's Attorney - James Koewen

Respondent(s) :

Plaintiff's Attorney - Kevin W. Coleman

Plaintiff's Attorney - Gregory Nuti

Defendant's Attorney - Eric Safire, Paul Pascuzzi, Todd Dressel, Robert Asperger, Jamie Deher, Michel Kuzmich, Warren Felger (phone), Caroline Newman (phone)

MOTION was :

ORDER TO BE PREPARED BY : chambers

Final ruling:

Scott Salyer, individually and as trustee of the Scott Salyer Revocable Trust; the Scott Salyer Revocable Trust; SK PM Corporation; SK Foods, LLC; SKF Canning, LLC; Blackstone Ranch Corporation; Monterey Peninsula Farms, LLC; Salyer Management Company, LLC; SK Farms Services, LLC; SK Frozen Foods, LLC; SS Farms, LLC; SSC Farming, LLC; SS Farms I, LLC; SS Farms II, LLC; SS Farms III, LLC; SKF Aviation, LLC; and CSSS, LP, dba Central Valley Shippers (the Salyer Parties), have filed a supplemental motion to stay several adversary proceedings, including this one. (The motion is a supplemental one because the Salyer Parties filed an earlier motion for a stay that was denied. See below.) The chapter 11 trustee, Bradley D. Sharp (the trustee), opposes the motion. For the reasons set forth below, the court intends to grant the motion.

In April 2010, the Salyer Parties filed their first motion for a stay of the adversary proceedings. This court denied the motion based in large part on what it perceived to be significant distinctions between the factual allegations in the criminal indictment against Scott Salyer and those in the adversary proceedings. On appeal by the Salyer Parties, the district court for this district reversed and, on April 14, 2011, remanded to this court to decide, in the first instance, whether discovery from or testimony of Salyer or his criminal counsel is reasonably necessary [fn] to dispose of a particular matter before the Bankruptcy Court in the adversary proceedings. Sharp v. SSC Farms I, LLC, United States District Court, Eastern District of California, Civ. No. S-10-1492 LKK, Order filed April 14, 2011, at 5:11-15. The court defined the applicable standard as follows: A matter is reasonably necessary if [the Salyer Parties] cannot adequately defend themselves in an adversary proceeding without evidence from Salyer or his criminal counsel. Id., 5:15-18.

Thus, the court will examine the issues in this particular adversary proceeding in light of this standard. In this adversary proceeding, the trustee seeks to quiet title to certain real properties the so-called waste water land as against the interests of SSC Farms I, LLC; SSC Farms II, LLC; and SSC Farming, LLC. The trustee alleges that Scott Salyer, an entity controlled by him, or those acting at his direction, operates, manages, and/or controls all three defendants. The crux of the factual allegations contained in the complaint is that Scott Salyer was aware of the transactions by which the defendants acquired the properties using the debtors resources, that he breached his fiduciary duties to the debtor to ensure that title to the properties was taken in the debtors name, and that the defendants were the instruments through which Salyer carried out this breach, and as such, should be deemed to be his alter egos. The trustee seeks a determination that as a result, the debtor is the equitable owner of the real properties.

Given these allegations, it appears virtually impossible that significant proceedings could be undertaken in this adversary proceeding without evidence from Salyer and/or his criminal counsel. At a minimum, the court believes the defendants in this action are likely to require evidence from Salyer and/or his criminal counsel in order to adequately defend themselves. As with the substantive consolidation action, Salyer is the individual who is at the center of the trustees allegations in this adversary proceeding. It simply strains credibility for the trustee to now suggest there is no showing that Salyer alone has any unique knowledge, necessary to the defense, which cannot be provided by other third parties who can adequately testify. Opposition to Defendants Supplemental Motion to Stay Adversary Proceedings, filed June 1, 2011 (the Opposition), at 2:3-4.

The defects in the trustees reasoning are readily apparent. First, the trustee claims the gravamen of the complaint is that officers and directors of the debtor, including Salyer, had fiduciary duties to the debtor, which were breached. However, the only individual alleged in the complaint to have had or to have breached a fiduciary duty to the debtor in connection with the waste water land is Salyer. Second, the trustee names seven other individuals he claims could testify about the circumstances surrounding the defendants acquisition of the waste water properties; he summarizes the role each one played, albeit briefly, and concludes that he does not believe any discovery from or testimony by Salyer or his criminal counsel is necessary to proceeding with the Trustees case in the Quiet Title Action. Opposition, 9:7-8. However, under the standard articulated by the district court, the point is not whether the trustee could make his case, it is whether the defendants could make their case.

The trustee also misstates the burden allocated to the defendants by the district court: The District Court has placed the burden on Defendants to explain what evidence that Salyer alone possesses, without which it is unreasonably difficult for them to defend themselves. Opposition, 9:16-17.

[T]he Defendants [conclusion that Salyers testimony is necessary] falls far short of identifying what evidence Salyer could provide about any of the issues in the Quiet Title Action, how that evidence would be reasonably necessary to Defendants defense and why that evidence could not be obtained from an alternative source.

Id., 10:3-6.

Simply stated, this court does not interpret the district courts April 14, 2011 order as requiring the defendants to make such a showing. Instead, based on the factual allegations in the adversary proceeding, the court is satisfied that Salyer is central to the disputes raised; the court need not speculate on what other sources might be available if Salyer is not, and the defendants will not be required to disprove the existence or adequacy of such other sources. (The trustees related argument that the defendants have not shown that obtaining the evidence needed for [their] defense would threaten Salyers Fifth Amendment rights (Opposition, 9:19-21) is a matter that was addressed in this courts ruling on the Salyer Parties first motion for a stay, which has been reversed by the district court; the court will not revisit the issue here.)

The real problem with the trustees opposition to the motion is that it does not apply the standard set by the district court and does not address the specific factual allegations of the complaint, but merely cites broad principles, draws broad conclusions, and charges the defendants with failing to provide sufficient particulars of the necessity of Salyers testimony. In the courts view, the factual allegations of the complaint are such that Salyers testimony (and possibly that of his criminal counsel) is likely to be central to resolution of the issues. Thus, the court concludes that evidence from Salyer and/or his criminal counsel is reasonably necessary for the defendants to adequately defend themselves in this proceeding. Accordingly, the court will grant the motion except as limited below.

The trustee cites three recent developments as suggesting that there is a risk the preliminary injunction previously issued by this court is not adequately safeguarding the assets that are the subject of the injunction. The Salyer Parties have not adequately responded to these allegations in particular, the court does not share their belief that the trustees concerns are exaggerated, does not agree that any potential

harm was remedied precisely because the Preliminary Injunction was in place (Defendants Omnibus Reply to Oppositions to Motions to Stay Adversary Proceedings, filed June 8, 2011, 10:19–20, emphasis in original), and does not view the trustees bringing these matters to the courts attention as litigation tactics. *Id.*, 11:5–7.

The court does not perceive denial of the stay motion as an effective way to address these issues, and does not view them as tilting the balance of the Keating factors (see *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324–25 (9th Cir. 1995)). For one thing, if the stay motion is not granted and the litigation proceeds with respect to Salyer, the assets remain at risk in the meantime. In short, the court simply does not see a denial of the stay motion as an effective remedy for the concerns the trustee has raised. The court will, however, modify the stay of this adversary proceeding to the extent necessary to permit the trustee to take actions to investigate the extent of compliance or non-compliance with the preliminary injunction. The court will also modify the stay to ensure the injunction is complied with, including to permit the injunction to be amended or other relief to be granted to ensure the assets are preserved.

Finally, the trustee suggests that discovery could proceed against the officers, witnesses, or other third parties related to the Defendants who would also have knowledge and information relevant to the defense without impairing Salyers Fifth Amendment rights. Opposition, 18:16–19. The trustee quotes from an exchange at the April 11, 2011 district court hearing, and concludes that all parties are in agreement that any stay that this Court might enter should not prevent the Trustee and the Defendants from taking discovery from other third parties, who have evidence related to the Adversary Proceedings. *Id.*, 19:4–6. There is nothing in the Salyer Parties written reply to indicate that they take issue with this conclusion.

However, at the hearing on the present motion, the Salyer Parties stated that they do oppose permitting the trustee to take third-party discovery. The court has reviewed the transcript of the April 11, 2011 hearing in the district court, together with the order issued following that hearing, on April 14, 2011. Although the issue of third-party discovery was discussed at the hearing, there is nothing in the order to suggest that if this court finds that the Salyer Parties cannot adequately defend themselves in a particular adversary proceeding without discovery from or testimony of Salyer or his criminal counsel, it may nevertheless allow discovery to proceed against third parties. In short, this court has found, above, that Salyer is sufficiently at the center of the disputes in this adversary proceeding that the defendants cannot adequately defend themselves without testimony of or discovery from Salyer and/or his criminal counsel. Thus, the language of the April 14, 2011 order suggests to this court that the adversary proceeding should be stayed, with no exception for third-party discovery. Accordingly, the motion will be granted and the adversary proceeding will be stayed, except with respect to the preliminary injunction, as discussed above. The court will issue an appropriate order.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

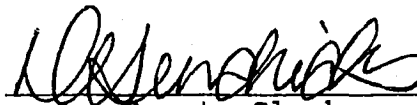
CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities at the addresses shown below or on the attached list.

SEE ATTACHED LIST

DATED: 6/28/11

By:


Deputy Clerk

EDC 3-070 (Rev. 6/28/10)

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RJN EXHIBIT P

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT S. BARDWIL
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
CIVIL MINUTES**

Adversary Title : Sharp et al v. CSSS, LP

Case No : 09-29162 - D - 11

Adv No : 09-02543 - D

Date : 6/22/11

Time : 9:30

Matter : [269] - Supplemental Motion/Application to Stay Adversary Proceedings [MSS-2] Filed by Defendant CSSS, LP (dhes)

OPPOSED

Judge : Robert S. Bardwil
Courtroom Deputy : Nancy Williams
Reporter : Diamond Reporters
Department : D

APPEARANCES for :

Movant(s) : Defendant's Attorney - James Keowen

Respondent(s) : Trustee's Attorney - Gregory Nuti, Kevin Coleman
Creditor's Attorney - Eric Safire, Paul Pascuzzi, Todd Dressel, Robert Asperger, James Deher, Micaehl Kuzmich, Warren Felger (phone), Caroline Newman(phone)

MOTION was :

ORDER TO BE PREPARED BY : Chambers

Final ruling:

Scott Salyer, individually and as trustee of the Scott Salyer Revocable Trust; the Scott Salyer Revocable Trust; SK PM Corporation; SK Foods, LLC; SKF Canning, LLC; Blackstone Ranch Corporation; Monterey Peninsula Farms, LLC; Salyer Management Company, LLC; SK Farms Services, LLC; SK Frozen Foods, LLC; SS Farms, LLC; SSC Farming, LLC; SS Farms I, LLC; SS Farms II, LLC; SS Farms III, LLC; SKF Aviation, LLC; and CSSS, LP, dba Central Valley Shippers (the Salyer Parties), have filed a supplemental motion to stay several adversary proceedings, including this one. (The motion is a supplemental one because the Salyer Parties filed an earlier motion for a stay that was denied. See below.) The Bank of Montreal (BMO), which has acquired the trustees claims in this adversary proceeding by assignment, opposes the motion. For the reasons set forth below, the court intends to grant the motion.

In April 2010, the Salyer Parties filed their first motion for a stay of the adversary proceedings. This court denied the motion, based in large part on what it perceived to be significant distinctions between the factual allegations in the criminal indictment against Scott Salyer and those in the adversary proceedings. On appeal by the Salyer Parties, the district court for this district reversed and, on April 14, 2011, remanded to this court to decide, in the first instance, whether discovery from or testimony of Salyer or his criminal counsel is reasonably necessary [fn] to dispose of a particular matter before the Bankruptcy Court in the adversary proceedings. Sharp v. SSC Farms I, LLC, United States District Court, Eastern District of California, Civ. No. S-10-1492 LKK, Order filed April 14, 2011, at 5:11-15. The court defined the applicable standard as follows: A matter is reasonably necessary if [the Salyer Parties] cannot adequately defend themselves in an adversary proceeding without evidence from Salyer or his criminal counsel. Id., 5:15-18.

Thus, the court will examine the issues in this particular adversary proceeding in light of this standard. This court previously considered and denied a motion of Larry Lichtenegger for summary judgment on the

trustees contempt motion in this adversary proceeding. (Lichtenegger is not a defendant in the adversary proceeding, but is a respondent to the contempt motion.) The evidence submitted in connection with that motion concerned telephone conversations and e-mails among Salyer, his attorneys, and some of the Salyer Parties attorneys. That evidence was sufficient to allow the court to consider and reject Lichteneggers allegation that he had no involvement with the events leading up to the drum line being shipped to New Zealand. Thus, the court determined it was in a position to deny the motion without the need for testimony of or further evidence from Salyer and/or his attorneys. (Neither Lichtenegger nor BMO had contended that the stay order prevented this court from ruling on the summary judgment motion, although BMO argued that granting the motion would be inappropriate because the stay order had prevented the trustee from completing discovery.)

However, it appears unlikely that any further significant proceedings could be undertaken in this adversary proceeding without evidence from Salyer and/or his criminal counsel. At a minimum, the court believes the defendant in the action, CSSS, LP (CSSS), is likely to require evidence from Salyer and/or his criminal counsel in order to adequately defend itself. Although the contempt motion is but one aspect of this adversary proceeding, it is significant that Lichteneggers summary judgment motion was replete with references to Salyers participation in and direction of the activities by which the drum line was shipped. Lichtenegger contended Salyer had taken control of the Drum Line and was arranging its export and was directing all of the activities regarding shipping the Drum Line. Memorandum in Support of Larry J. Lichteneggers Motion for Summary Judgment, filed March 21, 2011, at 4:3-4, 10:6-8. As CSSS has observed, the trustee contended Salyer was the brains behind the shipment and had sought leave to depose him. In support of that motion, the trustee (whose position BMO has acquired by assignment), argued that [n]o other deposition, or cumulative discovery, can replace the potential probative value to Salyers deposition. Memorandum of Points and Authorities in Support of Trustees Motion for Leave to Depose Scott Salyer, filed June 2, 2010, 3:19-20. In addition, the trustee alleged in his complaint in this adversary proceeding that Salyer or an entity controlled by him or persons acting at his direction manage and control CSSS and SK Foods. In short, Salyer is at the center of the trustees allegation that SK Foods fraudulently transferred the drum line to CSSS prior to the commencement of SK Foods bankruptcy case.

BMOs arguments are red herrings. First, the following arguments were addressed in connection with the Salyer Parties first motion for a stay; they are discussed in this courts ruling on that motion, which has been reversed by the district court: (1) that Salyer has not properly invoked his privilege against self-incrimination because he has done nothing more than assert a blanket Fifth Amendment claim; (2) that the events involved in the adversary proceeding are distinct from those involved in the criminal indictment; (3) that if a stay is imposed, the plaintiff will have to sit idle for perhaps years, even if the defendants assets are being depleted; and (4) the Keating factors do not warrant the imposition of a stay (see *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324-25 (9th Cir. 1995)). Although the district court did remand the stay matter to this court, it in no way reversed its position on these arguments, which it rejected in the original appeal, and it did not indicate in any way that these issues were again on the table. This court is bound by the district courts ruling on these issues and will not revisit them here.

For similar reasons, the court rejects BMOs argument that as a corporation, CSSS has no Fifth Amendment privilege and should not be allowed to piggyback on Salyers privilege. Quite simply, the district court was aware of the identities and capacities of the various adversary defendants at the time it issued its order; whether a defendant itself has a Fifth Amendment privilege forms no part of the standard articulated in that order.

BMOs next arguments seek to set up higher standards than the one articulated by the district court. BMO contends CSSS must show a particular affirmative defense for which it requires evidence from Salyer. CSSS has not raised any affirmative defense which requires Salyers testimony. Response and Objection to Motion to Stay, filed June 1, 2011 (Response), at 5:7-8. The argument rests on an incorrect formulation of the district courts standard: In order to obtain a stay under the framework established by Judge Karlton, CSSS must show that Salyers testimony is necessary for a specific defense; CSSS cannot obtain a stay based on the flawed supposition that the Trustee cannot meet its burden of proof without Salyers testimony. *Id.*, 2:2-5. Further, the fundamental requirement imposed by Judge Karltons order [is] a showing that the inability to offer specific testimony rises to the level of a violation of CSSS constitutional due process rights. *Id.* 1:21-24. These standards go beyond the one articulated by the district court and this court will not impose them.

The test this court is to apply is simple is discovery from or testimony of Salyer or his criminal counsel reasonably necessary for CSSS to adequately defend itself in this adversary proceeding? BMO answers no: (1) under FRCP 30(b)(6) (incorporated by FRBP 7030), CSSS may designate someone other than Salyer to testify on CSSSs behalf; (2) Salyer may respond to discovery with information that does not tend to incriminate him; and (3) CSSS can defend by way of business records, which are not protected by the Fifth Amendment. To accept this argument, the court would have to speculate that such other testimony

and documentary evidence would be sufficient for CSSSs defense.

Further, by this argument, BMO attempts to put the burden on CSSS to establish how evidence cannot be obtained just as well (or better) from sources other than Salyer or [his criminal counsel]. Response, 2-3. First, this court does not interpret the district courts April 14, 2011 order as requiring CSSS to make such a showing. And based on the factual allegations in the adversary proceeding, the court is satisfied that Salyer is central to the disputes raised; the court need not speculate on what other sources might be available if Salyer is not, and CSSS will not be required to disprove the existence or adequacy of such other sources.

Finally, BMO suggests it is unlikely that Salyer could offer testimony in this adversary proceeding that would tend to incriminate him in the criminal matter but at the same time, would tend to support CSSSs position in the adversary proceeding. [G]iven the emails produced in this matter suggesting that Salyer orchestrated the transfer of the Drum Line, it is difficult to imagine any incriminating testimony that Salyer could give regarding the transfer of the Drum Line that would exonerate CSSS from liability, and CSSS had identified none. Response, 8:10-14. However, in this courts view, it is counter-intuitive that a party invoking the Fifth Amendment privilege should be called upon to disclose incriminating information in order to protect it.

The real problem with BMOs opposition to the motion is that it does not apply the standard set by the district court and does not address the specific factual allegations of the complaint or the contempt motion, but merely cites broad principles, draws broad conclusions, and charges CSSS with failing to provide sufficient particulars of the necessity of Salyers testimony. In the courts view, the factual allegations of the complaint and the contempt motion are such that Salyers testimony (and possibly that of his criminal counsel) is likely to be central to resolution of the issues. Thus, the court concludes that evidence from Salyer and/or his criminal counsel is reasonably necessary for CSSS to adequately defend itself in this proceeding, and applying the district courts standard as set forth in its April 14, 2011 order, the court will grant the motion.

Finally, the Salyer Parties motions to stay certain other adversary proceedings in this case, which are also on this calendar, were met with a suggestion by the trustee that discovery could proceed against the employees, directors, officers, witnesses or other third parties related to the Defendants who would also have knowledge and information relevant to the defense without impairing Salyers Fifth Amendment rights. Sharp v. Salyer, Adv. No. 10-2014, Opposition to Defendants Supplemental Motion to Stay Adversary Proceedings, filed June 1, 2011, 20:17-20. The trustee quoted from an exchange at the April 11, 2011 district court hearing, and concluded in his opposition to the stay motion that all parties are in agreement that any stay that this Court might enter should not prevent the Trustee and the Defendants from taking discovery from other third parties, who have evidence related to the Adversary Proceedings. Id., 21:4-6. The Salyer Parties filed a reply to the trustees opposition, in which they did not take issue with this conclusion.

However, at the hearing on the present motion, the Salyer Parties stated that they do oppose permitting the trustee to take third-party discovery. The court has reviewed the transcript of the April 11, 2011 hearing in the district court, together with the order issued following that hearing, on April 14, 2011. Although the issue of third-party discovery was discussed at the hearing, there is nothing in the order to suggest that if this court finds that the Salyer Parties cannot adequately defend themselves in a particular adversary proceeding without discovery from or testimony of Salyer or his criminal counsel, it may nevertheless allow discovery to proceed against third parties. In short, this court has found, above, that Salyer is sufficiently at the center of the disputes in this adversary proceeding that the defendants cannot adequately defend themselves without testimony of or discovery from Salyer and/or his criminal counsel. Thus, the language of the April 14, 2011 order suggests to this court that the adversary proceeding should be stayed, with no exception for third-party discovery. Accordingly, the motion will be granted and the adversary proceeding will be stayed. The court will issue an appropriate order.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

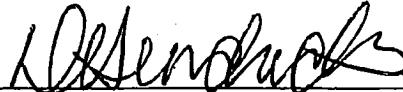
CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities at the addresses shown below or on the attached list.

SEE ATTACHED LIST

DATED: 6/28/11

By:



Deputy Clerk

EDC 3-070 (Rev. 6/28/10)

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RJN EXHIBIT Q

FILED

JUN 28 2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 09-29162-D-11

SK FOODS, L.P.,)

Debtor.)

BRADLEY D. SHARP, Chapter 11)
Trustee,)

Adv. Pro. No. 10-2016-D

Docket Control No. MSS-2

Plaintiff,)

v.)

SKF AVIATION, LLC, et al.,)

DATE: June 22, 2011

Time: 9:30 a.m.

Dept: D

Defendants.)

ORDER

The court having issued findings and analysis in the matter of Defendants' Supplemental Motion to Stay Adversary Proceedings, Docket Control No. MSS-2 (the "Motion"), which are included in the civil minutes, a copy of which is attached hereto, and good cause appearing,

IT IS HEREBY ORDERED that:

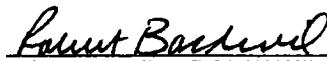
1. The Motion is granted and this adversary proceeding is stayed pending further order of this court, except as set forth below;

/ / /

1 2. The stay shall not prevent actions by any party to
2 investigate the extent of compliance or non-compliance with the
3 preliminary injunction filed March 20, 2010 in this adversary
4 proceeding, as the same has been modified by orders of this court
5 filed October 13, 2010; January 20, 2011; February 16, 2011; May
6 1, 2011; and May 10, 2011 (collectively, the "Preliminary
7 Injunction Orders");

8 3. The stay shall not prevent actions by the plaintiff
9 necessary to ensure the Preliminary Injunction Orders are
10 complied with, including actions seeking to modify the
11 Preliminary Injunction Orders or seeking additional relief from
12 this court intended to ensure that the assets covered by the
13 Preliminary Injunctions Orders are preserved.

14 Dated: June 27, 2011


15 ROBERT S. BARDWIL
16 United States Bankruptcy Judge
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Thus, the court will examine the issues in this particular adversary proceeding in light of this standard. In

this adversary proceeding, the trustee seeks to recover alleged preferential payments and/or fraudulent transfers from the defendants, SKF Aviation, LLC (SKF Aviation), and CSSS, LP, dba Central Valley Shippers (CSSS) (collectively, the defendants). As with the other adversary proceedings on this calendar, Scott Salyer is alleged to have owned, controlled, operated, and/or managed the debtor and the defendants. The trustee alleges that the debtor funded or guaranteed financing for the purchase of aircraft by SKF Aviation, funded the operating costs for flights primarily for Salyers personal use, and financed CSSS with the goal on Salyers part that CSSS would generate only enough income to pay the premium on a life insurance policy covering Salyer so he would not have to pay the premium personally.

Given these allegations, it appears unlikely that significant proceedings could be undertaken in this adversary proceeding without evidence from Salyer and/or his criminal counsel. At a minimum, the court believes the defendants in this action are likely to require evidence from Salyer and/or his criminal counsel in order to adequately defend themselves. As with the other adversary proceedings, Salyer is the individual who is at the center of the trustees allegations here. It simply strains credibility for the trustee to now suggest there is no showing that Salyer alone has any unique knowledge, necessary to the defense, which cannot be provided by other third parties who can adequately testify. Opposition to Defendants Supplemental Motion to Stay Adversary Proceedings, filed June 1, 2011 (the Opposition), at 2:3-4.

The defect in the trustees reasoning is readily apparent. The trustee lists four other individuals he claims could testify about the allegations contained in the complaint; he summarizes the categories of information each one possesses (although very briefly), and concludes that he does not believe any discovery from or testimony by Salyer or his criminal counsel is necessary to proceed with the Trustees case in the Aviation Action. Opposition, 7:12-13. However, under the standard articulated by the district court, the point is not whether the trustee could make his case, it is whether the defendants could make their case.

The trustee also misstates the burden allocated to the defendants by the district court: The District Court has placed the burden on Defendants to explain what evidence that Salyer alone possesses, without which it is impossible for them to defend themselves. Opposition, 7:22-23.

[T]he Defendants fail to identify what evidence Salyer could provide about any of the issues in the Aviation Action, how that evidence would be reasonably necessary to the Defendants defense, and why that evidence could not be obtained from an alternative source.

Id., 8:6-8.

Simply stated, this court does not interpret the district courts April 14, 2011 order as requiring the defendants to make such a showing. Instead, based on the factual allegations in the adversary proceeding, the court is satisfied that Salyer is central to the disputes raised; the court need not speculate on what other sources might be available if Salyer is not, and the defendants will not be required to disprove the existence or adequacy of such other sources. (The trustees related argument that the defendants have not shown that obtaining the evidence needed for [their] defense would threaten Salyers Fifth Amendment rights (Opposition, 7:25-26) is a matter that was addressed in this courts ruling on the Salyer Parties first motion for a stay, which has been reversed by the district court; the court will not revisit the issue here.)

The real problem with the trustees opposition to the motion is that it does not apply the standard set by the district court and does not address the specific factual allegations of the complaint, but merely cites broad principles, draws broad conclusions, and charges the defendants with failing to provide sufficient particulars of the necessity of Salyers testimony. In the courts view, the factual allegations of the complaint are such that Salyers testimony (and possibly that of his criminal counsel) is likely to be central to resolution of the issues. Thus, the court concludes that evidence from Salyer and/or his criminal counsel is reasonably necessary for the defendants to adequately defend themselves in this proceeding. Accordingly, the court will grant the motion except as limited below.

The trustee cites three recent developments as suggesting that there is a risk the preliminary injunction previously issued by this court is not adequately safeguarding the assets that are the subject of the injunction. The Salyer Parties have not adequately responded to these allegations in particular, the court does not share their belief that the trustees concerns are exaggerated, does not agree that any potential harm was remedied precisely because the Preliminary Injunction was in place (Defendants Omnibus Reply to Oppositions to Motions to Stay Adversary Proceedings, filed June 8, 2011, 10:19-20, emphasis in original), and does not view the trustees bringing these matters to the courts attention as litigation tactics. Id., 11:5-7.

The court does not perceive denial of the stay motion as an effective way to address these issues, and does not view them as tilting the balance of the Keating factors (see *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324-25 (9th Cir. 1995)). For one thing, if the stay motion is not granted and the litigation

proceeds with respect to Salyer, the assets remain at risk in the meantime. In short, the court simply does not see a denial of the stay motion as an effective remedy for the concerns the trustee has raised. The court will, however, modify the stay of this adversary proceeding to the extent necessary to permit the trustee to take actions to investigate the extent of compliance or non-compliance with the preliminary injunction. The court will also modify the stay to ensure the injunction is complied with, including to permit the injunction to be amended or other relief to be granted to ensure the assets are preserved.

Finally, the trustee suggests that discovery could proceed against the officers, witnesses, or other third parties related to the Defendants who would also have knowledge and information relevant to the defense without impairing Salyers Fifth Amendment rights. Opposition, 17:24-18:2. The trustee quotes from an exchange at the April 11, 2011 district court hearing, and concludes that all parties are in agreement that any stay that this Court might enter should not prevent the Trustee and the Defendants from taking discovery from other third parties, who have evidence related to the Adversary Proceedings. *Id.*, 18:6-8. There is nothing in the Salyer Parties written reply to indicate that they take issue with this conclusion.

However, at the hearing on the present motion, the Salyer Parties stated that they do oppose permitting the trustee to take third-party discovery. The court has reviewed the transcript of the April 11, 2011 hearing in the district court, together with the order issued following that hearing, on April 14, 2011. Although the issue of third-party discovery was discussed at the hearing, there is nothing in the order to suggest that if this court finds that the Salyer Parties cannot adequately defend themselves in a particular adversary proceeding without discovery from or testimony of Salyer or his criminal counsel, it may nevertheless allow discovery to proceed against third parties. In short, this court has found, above, that Salyer is sufficiently at the center of the disputes in this adversary proceeding that the defendants cannot adequately defend themselves without testimony of or discovery from Salyer and/or his criminal counsel. Thus, the language of the April 14, 2011 order suggests to this court that the adversary proceeding should be stayed, with no exception for third-party discovery. Accordingly, the motion will be granted and the adversary proceeding will be stayed, except with respect to the preliminary injunction, as discussed above. The court will issue an appropriate order.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities at the addresses shown below or on the attached list.

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DATED: 6/28/11

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Deputy Clerk

EDC 3-070 (Rev. 6/28/10)

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RJN EXHIBIT R

FILED

JUN 28 2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:

SK FOODS, L.P.,

Debtor.

BRADLEY D. SHARP, Chapter 11
Trustee,

Plaintiff,

v.

FRED SALYER IRREVOCABLE TRUST,

Defendants.

Case No. 09-29162-D-11

Adv. Pro. No. 10-2017-D

Docket Control No. MSS-2

DATE: June 22, 2011

Time: 9:30 a.m.

Dept: D

ORDER

The court having issued findings and analysis in the matter of Defendants' Supplemental Motion to Stay Adversary Proceedings, Docket Control No. MSS-2 (the "Motion"), which are included in the civil minutes, a copy of which is attached hereto, and good cause appearing,

IT IS HEREBY ORDERED that the Motion is granted and this adversary proceeding is stayed pending further order of this court.

Dated: June 27, 2011

Robert S. Bardwil
ROBERT S. BARDWIL
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
CIVIL MINUTES**

Adversary Title : Sharp et al v. Fred Salyer
Irrevocable Trust et al

Case No : 09-29162 - D - 11

Adv No : 10-02017 - D

Date : 6/22/11

Time : 10:00

Matter : [87] - Supplemental Motion/Application to
Stay Adversary Proceedings [MSS-2] Filed
by Defendants Fred Salyer Irrevocable Trust,
Gerard Rose (dhes) Modified on 4/28/2011
(dhes).

OPPOSED

Judge : Robert S. Bardwil
Courtroom Deputy : Nancy Williams
Reporter : Diamond Reporters
Department : D

APPEARANCES for :

Movant(s) :

Defendant's Attorney - James Koewen

Respondent(s) :

Plaintiff's Attorney - Gregory Nuti, Kevin Coleman

Creditor's Attorney - Eric Safire, Paul Pascuzzi, Todd Dressel, Robert Asperger, James
Deher, Michael Kuzmich, Warren Felger (phone), Caroline Newman (phone)

MOTION was :

Final ruling:

Scott Salyer, individually and as trustee of the Scott Salyer Revocable Trust; the Scott Salyer Revocable Trust; SK PM Corporation; SK Foods, LLC; SKF Canning, LLC; Blackstone Ranch Corporation; Monterey Peninsula Farms, LLC; Salyer Management Company, LLC; SK Farms Services, LLC; SK Frozen Foods, LLC; SS Farms, LLC; SSC Farming, LLC; SS Farms I, LLC; SS Farms II, LLC; SS Farms III, LLC; SKF Aviation, LLC; and CSSS, LP, dba Central Valley Shippers (the Salyer Parties), have filed a supplemental motion to stay several adversary proceedings, including this one. (The motion is a supplemental one because the Salyer Parties filed an earlier motion for a stay that was denied. See below.) The chapter 11 trustee, Bradley D. Sharp (the trustee), opposes the motion. For the reasons set forth below, the court intends to grant the motion.

In April 2010, the Salyer Parties filed their first motion for a stay of the adversary proceedings. This court denied the motion, based in large part on what it perceived to be significant distinctions between the factual allegations in the criminal indictment against Scott Salyer and those in the adversary proceedings. On appeal by the Salyer Parties, the district court for this district reversed and, on April 14, 2011, remanded to this court to decide, in the first instance, whether discovery from or testimony of Salyer or his criminal counsel is reasonably necessary [fn] to dispose of a particular matter before the Bankruptcy Court in the adversary proceedings. Sharp v. SSC Farms I, LLC, United States District Court, Eastern District of California, Civ. No. S-10-1492 LKK, Order filed April 14, 2011, at 5:11-15. The court defined the applicable standard as follows: A matter is reasonably necessary if [the Salyer Parties] cannot adequately defend themselves in an adversary proceeding without evidence from Salyer or his criminal counsel. Id., 5:15-18.

Thus, the court will examine the issues in this particular adversary proceeding in light of this standard. In his complaint in this adversary proceeding, the trustee seeks a judgment in the amount of \$3,948.630 on account of monies allegedly loaned by the debtor to the Fred Salyer Irrevocable Trust (FSIT) for the purchase of and premiums on a life insurance policy under which Scott Salyer was the beneficiary. The complaint does not allege that the funds were loaned by the debtor at the direction of Scott Salyer; however, it does allege that Salyer, an entity controlled by him, or those acting at his direction, operated, managed, and/or controlled the debtor. Further, in a motion for summary judgment filed in December 2010, the trustee alleged that within the one year prior to the commencement of the debtors bankruptcy case, Scott Salyer caused the loan, which had been carried on the debtors books for nine years as a note receivable, to be reclassified as a long-term investment. The summary judgment motion is set for a continued hearing on July 14, 2011.

Given these allegations, it is unlikely that significant proceedings could be undertaken in this adversary proceeding without evidence from Salyer and/or his criminal counsel. At a minimum, the court believes the defendants in this action are likely to require evidence from Salyer and/or his criminal counsel in order to adequately defend themselves. As with the other adversary proceedings, Salyer is the individual who is at the center of the trustees allegations here. It simply strains credibility for the trustee to now suggest there is no showing that Salyer alone has any unique knowledge, necessary to the defense, which cannot be provided by other third parties who can adequately testify. Opposition to Defendants Supplemental Motion to Stay Adversary Proceedings, filed June 1, 2011 (the Opposition), at 2:3-4.

The defect in the trustees reasoning is readily apparent. The trustee contends Gerard Rose, the trustee of the FSIT, could testify about why the debtor made the payments to or on behalf of FSIT on the insurance policy, and that Shondale Seymour, the debtors former CFO, could testify about the payments and the manner in which they were booked on the debtors records. The trustee concludes that he does not believe any discovery from or testimony by Salyer or his criminal counsel is necessary to proceed with the Trustees case in the FSIT Action. Opposition, 7:3-4. However, under the standard articulated by the district court, the point is not whether the trustee could make his case, it is whether the defendants could make their case. As the defendants point out, it is clear that Seymour will be testifying for the trustee; it is illogical for the trustee to suggest Seymour could play any role in the defendants preparation of their defense. Further, the record is not clear as to when Gerard Rose became trustee of the FSIT; it does appear he was not its trustee throughout the time the loans by the debtor were being made.

The trustee also misstates the burden allocated to the defendants by the district court: The District Court has placed the burden on Defendants to explain what evidence that Salyer alone possesses, without which it is impossible for them to defend themselves. Opposition, 7:10-11. He also complains the defendants have failed to show that the information necessary for their defense could not be obtained from an alternative source. Simply stated, this court does not interpret the district courts April 14, 2011 order as requiring the defendants to make such a showing. Instead, based on the factual allegations in the adversary proceeding, the court is satisfied that Salyer is central to the disputes raised; the court need not speculate on what other sources might be available if Salyer is not, and the defendants will not be required to disprove the existence or adequacy of such other sources. (The trustees related argument that the defendants have not shown that obtaining the evidence needed for [their] defense would threaten Salyers Fifth Amendment rights (Opposition, 7:13-14) is a matter that was addressed in this courts ruling on the Salyer Parties first motion for a stay, which has been reversed by the district court; the court will not revisit the issue here.)

The real problem with the trustees opposition to the motion is that it does not apply the standard set by the district court and does not address the specific factual allegations of the complaint, but merely cites broad principles, draws broad conclusions, and charges the defendants with failing to provide sufficient particulars of the necessity of Salyers testimony. In the courts view, the factual allegations of the complaint are such that Salyers testimony (and possibly that of his criminal counsel) is likely to be central to resolution of the issues. Thus, the court concludes that evidence from Salyer and/or his criminal counsel is reasonably necessary for the defendants to adequately defend themselves in this proceeding.

Finally, the trustee suggests that discovery could proceed against the officers, witnesses, or other third parties related to the Defendants who would also have knowledge and information relevant to the defense without impairing Salyers Fifth Amendment rights. Opposition, 14:15-17. The trustee quotes from an exchange at the April 11, 2011 district court hearing, and concludes that all parties are in agreement that any stay that this Court might enter should not prevent the Trustee and the Defendants from taking discovery from other third parties, who have evidence related to the Adversary Proceedings. *Id.*, 15:4-6. There is nothing in the Salyer Parties written reply to indicate that they take issue with this conclusion.

However, at the hearing on the present motion, the Salyer Parties stated that they do oppose permitting the trustee to take third-party discovery. The court has reviewed the transcript of the April 11, 2011 hearing in

the district court, together with the order issued following that hearing, on April 14, 2011. Although the issue of third-party discovery was discussed at the hearing, there is nothing in the order to suggest that if this court finds that the Salyer Parties cannot adequately defend themselves in a particular adversary proceeding without discovery from or testimony of Salyer or his criminal counsel, it may nevertheless allow discovery to proceed against third parties. In short, this court has found, above, that Salyer is sufficiently at the center of the disputes in this adversary proceeding that the defendants cannot adequately defend themselves without testimony of or discovery from Salyer and/or his criminal counsel. Thus, the language of the April 14, 2011 order suggests to this court that the adversary proceeding should be stayed, with no exception for third-party discovery. Accordingly, the motion will be granted and the adversary proceeding will be stayed. The court will issue an appropriate order.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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